202 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-38561 of 2021
Date of Decision: February 23, 2023

Sukhbir Singh ...Petitioner
Versus
Pawan Kumar Walia ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Deepender Singh, Advocate with
Mr. Ram Kishan Rana, Advocate for
the petitioner.

Mr. Bijender Singh Dhankar, Advocate
for the respondent.

DEEPAK GUPTA, J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C is to quash criminal complaint bearing NACT No.296 of 2017 titled Pawan Kumar Walia Vs. Virender Singh and another" under Section 138 of the Negotiable Instruments Act, pending in the Court of learned Judicial Magistrate Ist Class, Panchkula besides summoning order dated 24.03.2017 and the subsequent orders including the order dated 07.03.2019 passed by learned Additional Sessions Judge, Panchkula dismissing the revision.

Complaint in question was filed by respondent- Pawan Kumar Walia regarding dishonour of a cheque amounting to ₹15 lacs against the petitioner and co-accused Virender Singh. It was alleged that petitioner and co-accused had taken friendly loan of ₹15 lacs and in order to discharge the liability, cheque from the joint account of the two, was issued. After taking preliminary evidence, summoning order was passed against both the accused, i.e. petitioner and the co-accused Virender.

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Contention of the petitioner is that cheque in question does not bear his signatures and simply because he is the joint account holder, will not make him liable. Learned counsel has relied upon **Aparna A. Shah Vs. Sheth Developers Pvt. Ltd., (2013) 8 SCC 71.**

An application for recalling the summoning order was filed on this ground but learned trial Court rejected the same vide order dated 22.05.2018 (Annexure P.6) and the revision against that order was dismissed by learned Additional Sessions Judge, Panchkula vide order dated 07.03.2019 (Annexure P.8).

On the other hand, contention of counsel for the respondent is that prior to filing of the complaint, a statutory legal notice was sent to both the accused but petitioner did not file any reply and so he cannot now wriggle out from the liability.

Having considered the submissions of both the sides, I find that there is merit in the petition.

It is conceded position that cheque in question does not bear the signatures of petitioner, although it was issued from the joint account of petitioner and co-accused. In **Aparna A. Shah's case (supra)**, a similar issued was considered by Hon'ble Supreme Court and it was held as under:-

> "In the case on hand, we are concerned with criminal liability on account of dishonour of a cheque. It primarily falls on the drawer, if it is a Company, then Drawer Company and is extended to the officers of the company. The normal rule in the cases involving criminal liability is against vicarious liability. To put it clear, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to

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exception on account of specific provision being made in statutes extending liability to others. For example, Section 141 of the N.I. Act is an instance of specific provision that in case an offence under Section 138 is committed by a company, the criminal liability for dishonour of a cheque will extend to the officers of the company. As a matter of fact, Section 141 contains conditions which have to be satisfied before the liability can be extended. Inasmuch as the provision creates a criminal liability, the conditions have to be strictly complied with. In other words, the persons who had nothing to do with the matter, need not be roped in. A company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, the officers of the company, who are responsible for the acts done in the name of the company, are sought to be made personally liable for the acts which result in criminal action being taken against the company. In other words, it makes every person who, at the time the offence was committed, was in-charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence. It is true that the proviso to sub- section enables certain persons to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence. The liability under Section 141 of the N.I. Act is sought to be fastened vicariously on a person connected with the company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability."

Hon'ble Supreme Court then referred to **Gita Berry Vs. Genesis Educational Foundation, (2008) 151 DLT 155**, wherein quashing of the complaint under Section 138 of the Negotiable Instruments Act was sought on the ground that petitioner had not signed

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the cheque, though she was the joint account holder along with her husband. Delhi High Court accepted the contention and quashed the complaint by holding that there was nothing on record that petitioner was responsible for the cheque in question.

Reference was then made by Hon'ble Supreme Court to a judgment of this High Court rendered in **Smt. Bandeep Kaur Vs. S. Avneet Singh, 2008(2) PLR 796**, wherein, in a similar situation, it was held that in case the drawer of a cheque fails to make the payment on receipt of a notice, then the provisions of Section 138 of the NI Act could be attracted only against him. It was held further that though the cheque was drawn to a joint bank account which is to be operated by anyone i.e. petitioner or by her husband but the controversial document is the cheque, the liability regarding dishonour of which can be fastened only on the drawer of it. After saying so, the plea of the petitioner to quash proceedings was accepted qua her.

Hon'ble Supreme Court endorsed the aforesaid view as taken by the Delhi as well as Punjab and Haryana High Court and held that it is only drawer of the cheque who can be prosecuted under Section 138 of the NI Act and since the appellant before the Supreme Court was not drawer of the cheque and has not signed the cheque, so she was not liable. Hon'ble Supreme Court held further that a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. Said principle is an exception to Section 141 of the NI Act, which has no application in the case in hand. The proceedings filed under Section 138 of the NI Act cannot be

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used as arm twisting tactics to recover the amount allegedly due to the complainant.

Similar view has been taken by this High Court in **<u>Baljeet Kaur Vs. Tarandeep Singh, 2017(3) Law Herald 2422</u>**. In that case, cheque in question was issued by the father of the petitioner and not by the petitioner though the account was joint between the petitioner and her father. It was held that only the drawer of the cheque is responsible and so complaint as well as summoning order qua petitioner were quashed by holding that complaint was not legally sustainable against the petitioner.

The facts of the present case are squarely covered by the above-cited authorities. In this case also, cheque in question is not signed by the petitioner. Petitioner not being the drawer of the cheque, he cannot be prosecuted simply for the reason that cheque has been issued from the joint account held by him and the co-accused.

Consequently, the complaint bearing No. NACT No.296 of 2017 titled <u>Pawan Kumar Walia Vs. Virender Singh and another”</u> under Section 138 of the Negotiable Instruments Act, pending in the Court of learned Judicial Magistrate Ist Class, Panchkula besides summoning order dated 24.03.2017 and the subsequent orders including the order dated 07.03.2019 passed by learned Additional Sessions Judge, Panchkula, are hereby quashed qua the petitioner only.

February 23, 2023 **(DEEPAK GUPTA)**
renu **JUDGE**

Whether reasoned/speaking: Yes/No
Whether reportable: Yes/No

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