IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207 (2) **CRM M-30947 of 2017 (O&M)**
Date of Decision: 23.04.2024

1. Bhupinder Kaur @ Bhupender Kaur and another ...Petitioners

Versus

Satish Kumar ... Respondent

2. **CRM M-30949 of 2017**

Bhupinder Kaur @ Bhupender Kaur and another … Petitioners

Vs.

Rajesh Kumar ...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Aakash Singla, Advocate, for the petitioners.

Mr. Akash Yadav, Advocate, for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. This order shall dispose off two petitions, i.e., **CRM M-30947 of 2017,** titled as **"Bhupinder Kaur @ Bhupender Kaur and another Vs. Satish Kumar"** and **CRM M-30949 of 2017,** titled as "**Bhupinder Kaur @ Bhupender Kaur and another Vs. Rajesh Kumar",** whereby, the petitioners have prayed for quashing of criminal complaints bearing Nos. 961/2014 and 960/2014 (Annexure P-1) filed by respondent(s) under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as '**the Act')** and orders of serving the notices of accusation and notices of accusation (Annexure P-2 and P-2/A, respectively), passed by the trial

Court as common questions of law and facts are involved in both the cases.

2. For the disposal of these petitions, the facts have been borrowed from the petitions, i.e., CRM M-30947 of 2017 and the facts in the other petition, i.e., CRM M-30949 of 2017 are also same.

3. The respondent had filed a criminal complaint, i.e. NACT 961/2014 under Section 138 and 142 of the Act, titled as "**Satish Kumar Vs. Hotel Silver Sand and another"** (Annexure P-1) on 08.09.2024 against the petitioners and Sunil Dutt Bakshi, co-accused. It was alleged by respondent that he alongwith certain other persons used to work under the accused. The accused had settled the account of the complainant on 17.07.2014 and in discharge of legal liability, the accused had issued three cheques from the account of Sunil Dutt Bakshi, co-accused. On presentation, the said cheques were dishonoured by the banker of the accused due to "insufficient funds" vide memo dated 06.08.2014. After complying with the mandatory procedure prescribed under the Act, the respondent filed complaint under Section 138 and 142 of the Act against the petitioners and Sunil Dutt Bakshi, co-accused on 08.09.2014. After the appearance of the petitioners, the notice of accusation (Annexure P-2/A) was served upon the petitioners and their co-accused Sunil Dutt Bakshi.

4. Learned counsel for the petitioners contends that in the present case, the petitioners are neither the drawers of the cheque

(Annexure P-3) nor the cheque had been issued from the account maintained by the petitioners. He further contends that Bhupinder Kaur @ Bhupender Kaur, petitioner No. 1 is aged about 75 years and is owner of Hotel Silver Sand, Kurukshetra, petitioner No. 2. For running the affairs of the hotel, the petitioner No.1 used to take assistance of some contractors and Sunil Dutt Bakshi, co-accused, a contractor used to look after certain works of the hotel. The petitioners had no concern with the cheques, which were issued by Sunil Dutt Bakshi, respondent No. 2 and others and even the aforesaid cheques had been issued from the personal account of Sunil Dutt Bakshi, co-accused. Learned counsel for the petitioners further contends that from a bare perusal of Section 138 of the Act, it is very clear that the drawer of the cheque was liable for an offence under Section 138 of the Act, which has been reproduced below:-

> *138.* ***Dishonour of cheque for insufficiency, etc., of funds in the account.-***
>
> *Where* ***any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person*** *from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from*

that account by an agreement made with that bank, ***such person*** *shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:*

Provided that nothing contained in this section shall apply unless -

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn order within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, ***to the drawer of the cheque,*** *within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*

(c) ***the drawer of such cheque fails to make the payment*** *of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of receipt of the said notice.*

Explanation:- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability".

5. Learned counsel for the petitioners further contends that only the drawer of the cheque could be prosecuted under the provisions of Section 138 of the Act. Since, the cheque had been issued from the personal account maintained by Sunil Dutt Bakshi, co-accused only, the complaint (Annexure P-1) and all subsequent proceedings arising therefrom were liable to be quashed qua the petitioners, only on this ground.

6. On the other hand, learned counsel for the respondent submits that in fact, Sunil Dutt Bakshi, was also employed by the present petitioners and petitioners were also liable to be prosecuted alongwith him. He further contends that the petitioners have raised several disputed questions of fact, which could never be adjudicated by this Court under Section 138 of the Act.

7. The Hon'ble Supreme Court in the matter of ***Alka Khandu Avhad Vs. Amar Syamprasad Mishra 2021 (4) SCC 675*** has held as under:-

"9. On a fair reading of Section 138 of the NI Act, before a person can be prosecuted, the following conditions are required to be satisfied:
9.1. That the cheque in drawn by a person and on an account maintained by him with a banker.

9.2 For the payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability.

9.3 The said cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that accused.

10. Therefore, a person who is the signatory to the cheque and the cheque is drawn by that person on an account maintained by him and the cheque has been issued for the discharge, in whole or in part, of any debt or other liability and the said cheque has been returned by the bank unpaid, such person can be said to have committed an offence. Section 138 of the NI Act does not speak about the joint liability. Even in case of a joint liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 of the NI Act. A person might have been jointly liable to pay the debt, but if such a person who might have been liable to pay the debt jointly, cannot be prosecuted unless the bank account is jointly maintained and that he was a signatory to the cheque."

8. It has been held by the Hon'ble Supreme Court in the matter of ***Aparna A Shah Vs. M/s Sheth Developers P. Ltd. And another, 2013 (8) SCC 71*** as under:-

"21. The above discussion with reference to Section 138 and the materials culled out from the statutory notice,

reply, copy of the complaint, order, issuance of process, etc. clearly show only the drawer of the cheque being responsible for the same.

22. In addition to our conclusion, it is useful to refer to some of the decisions rendered by various High Courts on this issue.

23. The learned Single Judge of the Madras High Court in Devendra Pundir v. Rajendra Prasad Maurya10 , following decisions of this Court, has concluded thus:

"7. This Court is of the considered view that the above proposition of law laid down by the Hon'ble Apex Court in the decision of Fine Tubes9 is squarely applicable to the facts of the instant case. Even in this case, as already pointed out, the first accused is admittedly the sole proprietrix of the concern, namely, 'Kamakshi Enterprises' and as such, the question of the second accused to be vicariously held liable for the offence said to have been committed by the first accused under Section 138 of the Negotiable Instruments Act not at all arise."

After saying so, the learned Single Judge, quashed the proceedings initiated against the petitioner therein and permitted the Judicial Magistrate to proceed and expedite the trial in respect of others.

24. In Gita Berry v. Genesis Educational Foundation11, the petitioner therein was wife and she filed a petition under Section 482 of the Code seeking quashing of the complaint filed under Section 138 of the NI Act. The case of the petitioner therein was that the offence under Section 138 of the Act cannot be said to have been made out against her only on the ground that she was a joint account-holder along with her husband. It was pointed out that she has neither drawn nor issued the cheque in question and, therefore, according to her, the complaint against her was not maintainable. The learned Single Judge of the High Court of Delhi, after noting that the complaint was only under Section 138 of the Act and not under Section 420 IPC and pointing out that nothing was elicited from the complainant to the effect that the petitioner was responsible for the cheque in question, quashed the proceedings insofar as the petitioner therein.

25. In Bandeep Kaur v. Avneet Singh12 , in a similar situation, the learned Single Judge of the Punjab and Haryana High Court 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 Act could be attracted against him only. The learned Single Judge further held that though the cheque was drawn to a joint *bank account which is to be operated by anyone i.e. the petitioner or by her husband, but the controversial document is the cheque, the liability regarding dishonouring of which can be fastened on the drawer of it. After saying so, learned Single Judge accepted the plea of the petitioner and quashed the proceedings insofar as it relates to her and permitted the complainant to proceed further insofar as against others.*

26. In the light of the principles as discussed in the earlier paragraphs, we fully endorse the view expressed by the learned Judges of the Madras10 Delhi11 and Punjab and Haryana High Courts12.

27. In the light of the above discussion, we hold that under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains the name of the appellant and her husband, the fact remains that her husband alone had put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in-chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque.

28. We also hold that under Section 138 of the NI Act, in case of issuance of cheque from joint accounts, a joint account-holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account-holder. The said principle is an exception to Section 141 of the NI Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as arm-twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. The culpability attached to the dishonour of a cheque can, in no case "except in case of Section 141 of the NI Act" be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Act. Even the High Court has specifically recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to

> *him. Accordingly, the High Court was clearly wrong in holding that the prayer of the appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage".*

9. In the present case also, from a bare perusal of the cheque (Annexure P-3), it is clear that the cheque has been issued by Sunil Dutt Bakshi, co-accused of the petitioners, from his personal account. Even, the petitioners were admittedly not the drawers of the cheque in dispute nor they had any concern with the personal account, which was maintained by Sunil Dutt Bakshi. Only an oral submission has been made that Sunil Dutt Bakshi was employed by the present petitioners and no documentary evidence has been filed in this regard. Even, from the scheme of the Act, it is apparent that there is no provision in the Act regarding taking cognizance against a person other than the "drawer of the cheque". Only exception to this is in case of a company, where the person incharge of the company as well as the company itself shall be deemed guilty of the offence as provided under Section 141 of the Act. It is well settled principle of law that penal provisions have to be construed strictly and the emphasis is on the words "such person". Thus, the respondent could have prosecuted Sunil Dutt Sharma, co-accused only and not the petitioners.

8. Resultantly, the present petitions are allowed and the impugned complaints bearing Nos. 961/2014 and 960/2014 (Annexure P-1); the orders of serving the notices of accusation (Annexure P-2) and notices of accusation (Annexure P-2/A) are ordered to be quashed qua the petitioners only.

9. All pending applications, if any, are disposed of, accordingly.

23.04.2024 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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