IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.18103 of 2023
Date of decision: 4th November, 2024

Sonia Chopra
… Petitioner

Versus

Tamanna Gupta
… Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ravi Singh & Mr. Harsh Vardhan Shehrawat, Advocates for the petitioner.

Mr. Aman Bahri, Advocate for the respondent.

MANJARI NEHRU KAUL, J.

1. The petitioner is seeking quashing of Criminal Complaint titled as 'Tamanna Gupta Vs. Deepak Chopra and others' bearing No.NACT/4921/2020 dated 29.06.2020 filed under Section 138/142 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') (Annexure P-1) as well as the summoning order dated 03.02.2021 (Annexure P-2) vide which she has been summoned to face trial.

2. Learned counsel for the petitioner has submitted that the trial Court erred in summoning the petitioner, as the essential elements required to constitute an offence under Section 138 of the NI Act are entirely absent in the complaint in question. It has been contended that, according to the complaint (Annexure P-1) itself, the entire transaction took place exclusively between the complainant and the husband of the

petitioner. Furthermore, the cheque in question was issued by the husband of the petitioner, yet the petitioner has been implicated solely because the cheque was drawn from a joint account held with her husband. It is submitted that the petitioner neither signed nor issued the cheque in question, and simply because it was drawn from a joint account, without her signature, does not justify her prosecution under the NI Act. In support, the learned counsel for the petitioner has relied upon ***Criminal Appeal No.813 of 2013 titled as 'Mrs. Aparna A. Shah Vs. M/s Sheth Developers Pvt. Ltd. and another' decided on 01.07.2013***, where it was explicitly held by Hon'ble the Supreme Court that for a joint account holder, to incur liability under Section 138 of the NI Act, the cheque must bear the signatures of both account holders, which, by the complainant’s own account, is not the case here. Consequently, learned counsel for the petitioner argues that the complaint against her is unsustainable and both the criminal complaint as well as the summoning order, annexed as Annexures P-1 and P-2 respectively, deserve to be quashed.

3. Per contra, learned counsel for the respondent has reiterated the allegations made in the complaint, submitting that the husband of the petitioner (accused No.1) issued one of the three cheques from his joint account with the petitioner, to discharge his liability for a friendly loan advanced by the complainant to him and his business entities. These cheques were dishonoured upon presentation. Although the cheque in question, does not bear the signatures of the petitioner, learned counsel for the respondent has asserted that 2 of the cheques were issued by a

Company, 'M/s Macro Linkers', also named as an accused in the case, where the petitioner was playing an active role in its day-to-day affairs. Therefore, it has been contended by the learned counsel for the respondent that the petitioner bears vicarious liability for the dishonour of the cheque in question due to her active involvement in the affairs of the Company.

4. I have heard learned counsel for the parties and perused the relevant material on record.

5. Before proceeding further, it would be apposite to reproduce Section 138 of the Negotiable Instruments Act, 1881, which provides that criminal liability for the dishonour of cheque is imposed upon the drawer of the cheque who fails to make payment within 15 days of receiving a legal notice.

> ***"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 or 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, 5[within thirty 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 the receipt of the said notice."

6. For facility of reference, Section 7 of the NI Act, which defines the term 'Drawer', is reproduced hereunder:

*"**7. 'Drawer' 'Drawee'**.—The maker of a bill of exchange or cheque is called the 'drawer'; the person thereby directed to pay is called the 'drawee'… … …"*

7. Hence, it is clear that, to incur liability under Section 138 of the NI Act, the person must have both, signed and issued the cheque in question. The following observations of the Hon'ble Supreme Court, in ***'Mrs. Aparna A. Shah's case (supra)***, further reinforce this requirement.

"Para 23: We also hold that under Section 138 of the N.I. 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 N.I. Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as an 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 dishonour of a cheque can, in no case "except in case of Section 141 of the N.I. 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 6 (2021) 2 ALD (Cri) 1000 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."

8. Adverting to the facts of the instant case, it is undisputed, even by the learned counsel for the complainant, that the petitioner did not sign the cheque in question. Regarding the arguments raised by the complainant that two other cheques were issued by M/s Macro Linkers,

giving rise to vicarious liability for the petitioner, this argument is without merit. A perusal of the complaint reveals that only the petitioner, her husband and one entity, M/s Macro Linkers, have been arrayed as accused. M/s Macro Linkers has been, in the complaint itself, described as a Sole Proprietorship owned by the husband of the petitioner, Deepak Chopra, who alone is responsible for its daily operations. As such, no vicarious liability can be attributed to the petitioner, as per even the law settled by the Hon'ble Supreme Court in **'Raghu Lakshminarayan vs. M/s Fine Tubes' 2007 (4) SCR 885**, where it was held that a proprietary concern does not fall within the meaning of 'Company' or 'Firm', rendering Section 141 of the NI Act inapplicable in such cases.

9. Resultantly, in light of the circumstances and law laid down by Hon'ble the Supreme Court, the present petition is allowed and the impugned complaint (Annexure P-1) as well as the summoning order (Annexure P-2) are quashed qua the petitioner.

(MANJARI NEHRU KAUL)
JUDGE

November 4, 2024
rps

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