



2024:DHC:1410



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

***Date of decision: 21.02.2024***

+ **CRL.M.C. 1870/2022 & CRL.M.A. 7958/2022**

VISHWAS INGALE

..... Petitioner

Through: Mr.Yashasvi Virendra,  
Ms.Anany Virendra Mishra,  
Ms.Gitika Dixit, Mr.Aviyeet  
Negi & Ms.Nandini Chhabra,  
Advs.

versus

M/S ZENITH RUBBER PRIVATE LIMITED ..... Respondent

Through: Mr.Vinod Kumar & Mr.Tushar  
Mehta, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C') praying for quashing of the complaint filed by the respondent herein under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'), being CC No.3953/2020 titled ***M/s Zenith Rubber Private Limited v. M/s AakarPackart***, pending adjudication before the Court of the learned Metropolitan Magistrate (NI Act -02), West District, Tis Hazari Courts, Delhi.

2. The above complaint has been filed by the respondent



2024:DHC:1410



alleging M/s AakarPackart to be a Partnership Firm and the petitioner herein to be its Partner.

3. The learned counsel for the petitioner submits that apart from mentioning in the Memo of Parties that M/s AakarPackart is a Partnership Firm of which the petitioner herein is a Partner, there is no averment in the complaint to that effect. He further submits that the cheque in question has been issued by the wife of the petitioner- Mrs.Vishaka Ingale as the proprietor of M/s AakarPackart. He submits that, therefore, the petitioner could not have been made an accused in the said complaint, and the complaint is not maintainable as against him. He has drawn my attention to documents to support his plea that M/s AakarPackart is a proprietorship concern of Mrs.Vishaka Ingale.

4. On the other hand, the learned counsel for the respondent submits that the petitioner himself has been having regular business dealings on behalf of M/s AakarPackart with the respondent. He submits that the petitioner was also issuing cheques in discharge of the liabilities for those business dealings to the respondent. He submits that these are matters of evidence and, therefore, the complaint cannot be dismissed at this stage.

5. I have considered the submissions made by the learned counsels for the parties.

6. On the face of it, the cheque in question has been issued claiming M/s AakarPackart as a proprietorship concern. It is not



the case of the respondent that the said cheque has been signed by the petitioner herein. The petitioner is, therefore, not the drawer of the cheque, basis whereof the complaint has been filed.

7. Under Section 138 of the NI Act, the liability is only of the drawer of the cheque. It is only where the offence is committed by a company, that a vicarious liability is created under Section 141 of the NI Act on the person who was in-charge of or was responsible for the affairs of the company or the conduct of the business of the company or on the person with whose consent or connivance or due to whose neglect as a director, manager, secretary or other officer bearer of the company, that the offence has been committed.

8. In ***Aparna A. Shah v. Sheth Developers (P) Ltd.***, (2013) 8 SCC 71, the Supreme Court has reiterated that in a complaint under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted. It was held as under:

*“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."*

*(Emphasis Supplied)*

9. In the present case, from the cheque itself, it is apparent that M/s AakarPackart is a proprietorship concern and, therefore, Section 141 of the NI Act will not come into



2024:DHC:1410



operation. As noted hereinabove, it is only the drawer of the cheque who can be prosecuted.

10. In view of the above, the complaint filed by the respondent, that is, CC No.3953/2020 titled ***M/s Zenith Rubber Private Limited v. M/s AakarPackart*** is quashed. It shall, however, not prejudice the rights of the respondent to take an appropriate legal remedy in accordance with law.

11. The petition is allowed in the above terms. The pending application is disposed of as infructuous. There shall be no order as to costs.

NAVIN CHAWLA, J

FEBRUARY 21, 2024/rv/AS

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