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

% Judgment delivered on: 06.12.2024

\+ CRL.M.C. 1578/2021 & CRL.M.A. 11027/2021

CHARU PILLANI .....Petitioner
Through: Mr. Amit Gupta, Ms. Muskan Nagpal and Mr. Prateek Mehta, Advs.

versus

M/S. FRANKFINN AVIATION SERVICES PVT. LTD...Respondent
Through: Mr. Amandeep Singh Bhullar, Adv.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J. (ORAL)

1. The present petition has been filed under Section 482 CrPC praying for setting aside of order dated 21.08.2019 passed by the learned Metropolitan Magistrate whereby the application filed by the petitioner seeking discharge under Section 138 of Negotiable Instruments Act, 1938 [hereinafter referred to as 'the Act'] was dismissed.

2. The petition also impugns the order dated 08.03.2021 whereby the learned Additional Sessions Judge, South West District, Dwarka District Court, New Delhi dismissed the revision petition filed by the petitioner against the aforesaid order dated 21.08.2019 of the learned Metropolitan Magistrate.

3. In the present petition, a prayer has also been made to quash the

Criminal Complaint Case No.10306/2019 entitled ***M/s Frankfinn Aviation Services Pvt. Ltd. vs. Charu Pillani***.

4. At the outset it may also be noted that the cheque in question is for an amount of Rs. 25,000/-

5. Mr. Amit Gupta, the learned counsel appearing on behalf of the petitioner submits that he is confining his prayer only to the quashing of the complaint.

6. Accordingly, submission has been made by Mr. Gupta that the cheque in question has neither been drawn nor signed by the present petitioner. He submits that the cheque has been drawn and signed by the husband of the petitioner. He submits that a complaint under Section 138 of N.I. Act is not maintainable against the person who has not signed or issued the cheque. In support of the contention, he invites attention of the Court to the decision of the Hon'ble Supreme Court in ***Alka Khandu Avhad vs. Amar Syamprasad Mishra & Ors., AIR 2021 SC 1616***. He thus, urges that the complaint under Section 138 of N.I. Act against the present petitioner be quashed.

7. *Per contra,* the learned counsel appearing on behalf of the respondent/complainant submits that the complainant is not aware as to who has issued the cheque. He submits that in response to the legal notice sent by the respondent/complainant under Section 138 of N.I. Act, it was not divulged by the petitioner that she is not a signatory to the cheque in question.

8. I have heard the learned counsel appearing on behalf of the petitioner / accused, as well as, the learned counsel appearing on behalf of the respondent/complainant and have perused the record.

9. On a query posed by the Court, the learned counsel appearing on behalf

of the respondent fairly concedes that the signatures on the cheque are that of Mr. Mohit Pillani, who is the husband of the present petitioner. Therefore, it is not in dispute that the petitioner has not signed the cheque in question.

10. The issue involved in the present case is no more *res integra.* The Hon'ble Supreme Court dealing with such an issue in ***Alka Khandu Avhad****(supra)* has held that where a person is not a signatory to the cheque and the cheque is drawn by some other person, he/she cannot be held liable under Section 138 of N.I. Act. The relevant part of the said decision reads thus:

> *"8. We have heard the learned counsel appearing on behalf of the respective parties at length, considered material on record and also considered the averments and allegations in the complaint.* ***It emerges from the record that the dishonoured cheque was issued by original Accused 1 husband of the appellant. It was drawn from the bank account of original Accused 1****. The dishonoured cheque was signed by original Accused 1.* ***Therefore, the dishonoured cheque was signed by original Accused 1 and it was drawn on the bank account of original Accused 1. The appellant herein-original Accused 2 is neither the signatory to the cheque nor the dishonoured cheque was drawn from her bank account. That the account in question was not a joint account. In the light of the aforesaid facts, it is required to be considered whether the appellant herein-original Accused 2 can be prosecuted for the offence punishable under Section 138 read with Section 141 of the NI Act****?*
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> *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:*
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> *9.1. That the cheque is 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 account.

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.***

11. Now, so far as the case on behalf of the original complainant that the appellant herein-original Accused 2 can be convicted with the aid of Section 141 of the NI Act is concerned, the aforesaid has no substance.

12. ***Section 141 of the NI Act is relating to the offence by companies and it cannot be made applicable to the individuals.*** *The learned counsel appearing on behalf of the original complainant has submitted that "company" means any body corporate and includes, a firm or other association of individuals and therefore in case of a joint liability of two or more persons it will fall within "other association of individuals" and therefore with the aid of Section 141 of the NI Act, the appellant* *who is jointly liable to pay the debt, can be prosecuted. The aforesaid cannot be accepted.* ***Two private individuals cannot be said to be "other association of individuals". Therefore, there is no question of invoking Section 141 of the NI Act against the appellant, as the liability is the individual liability*** *(may be a joint liabilities), but cannot be said to be the offence committed by a company or by it corporate or firm or other associations of individuals. The appellant herein is neither a Director nor a partner in any firm who has issued the cheque.* ***Therefore, even the appellant cannot be convicted with the aid of Section 141 of the NI Act.*** *Therefore, the High Court has committed a grave error in not quashing the complaint against the appellant for the offence punishable under Section 138 read with Section 141 of the NI Act.* ***The criminal complaint filed against the appellant for the offence punishable under Section 138 read with Section 141 of the NI Act, therefore, can be said to be abuse of process of law and therefore the same is required to be quashed and set aside.***

13. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order dated 21-8-2019 passed by the High Court in Alka Khandu Avhad v. Amar Syamprasad Mishra [Alka Khandu Avhad v. Amar Syamprasad Mishra, 2019 SCC OnLine Bom 1630] refusing to quash the criminal complaint against the appellant for the offence punishable under Section 138 read with Section 141 of the NI Act is hereby quashed and set aside. ***The complaint case pending in the Court of the learned Metropolitan Magistrate filed by Respondent 1-original complainant being CC No. 2802/SS/2016 is hereby quashed and set aside****. The appeal is allowed accordingly."*

11. A similar view was taken by this Court in ***Neeta Gupta vs. Suman Anand,*** Crl.M.C.No.2067/2023 decided on 02.02.2024.The relevant part of the said decision reads thus:

"8. In the present case, the issue whether the statutory notice

was issued, in view of the factual situation wherein the respondent states that the petitioner refused to accept notice while the petitioner states that no such notice was received, is a matter of trial. ***However, the complaint case must fail owing to a more fundamental issue. The subject cheque, copy of which has been placed on record, was signed only by petitioner's late husband Arvind Gupta. Although it is conceded that the cheque was issued from an account jointly in the name of the Arvind Gupta and Neeta Gupta (petitioner herein) however, it is a matter of fact that the said cheque is not signed by the petitioner.***

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11. ***In view of the above, the criminal complaint filed against the present petitioner is clearly an abuse of process of law and the same is liable to be quashed and set aside.*** *Consequently, the present petition is allowed and the criminal complaint against the petitioner is quashed. Pending application is also disposed of as infructuous."*

12. Likewise, in ***Arushi Gupta vs. Ajay Chanana***, ***2023 SCC OnLine Del 7701,*** it was observed that the cheque in question had been issued by the brother of the petitioner and, in the backdrop of the said fact, this Court held that the petitioner cannot be held liable under Section 138 of N.I. Act and consequently, quashed the complaint filed against the petitioner therein. The relevant part of the said decision reads as under:

"11. If the cheque in question is returned unpaid on account of the conditions mentioned under Section 138 of the Act, such person alone is liable to be prosecuted for the offence under Section 138 of the Act. The same is apparent from the phraseology '…such person shall be deemed to have committed the offence…' used in Section 138 of the Act. ***Proceedings and prosecution can only continue against the drawer of the cheque as the penal provisions have to be strictly construed as they are.*** *It is, thus, that nobody barring the drawer of the cheque can be held criminally liable otherwise.* ***It is trite law that penal provisions should be construed strictly and the***

emphasis is on the words, "such person" which relates to the person, who has drawn the cheque in favour of the payee.

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*13. In view of the aforesaid, the present petition is allowed and the Complaint Case No.4061/2020, CC NI ACT 118/2021 dated 11.12.2020 titled "**Ajay Chanana vs. Ayush Gupta &Anr**.", filed by the respondent/ complainant against the petitioner and the other accused under Section 138 of the Act, pending before the learned Metropolitan Magistrate (NI Act), Rohini Courts, Delhi, is quashed qua the accused no.2 therein i.e. the petitioner herein."*

13. As the cheque in the present case is admittedly neither signed by the petitioner nor the petitioner is alleged to be the joint holder of the account on which the cheque was drawn, this Court is of the view that the liability under Section 138 of N.I. Act cannot be fastened on the petitioner in view of the legal position noted above.

14. The petition, therefore, deserves to be allowed and the complaint is liable to be quashed. Consequently, the ***Criminal Complaint Case No.10306/2019*** entitled ***M/s Frankfinn Aviation Services Pvt. Ltd. vs. Charu Pillani***, pending in the court of Ms. Divya Singh, learned Metropolitan Magistrate (NIA)-02, South West District, Dwarka Courts, is hereby quashed and set aside.

15. The petition stands disposed of.

VIKAS MAHAJAN, J

DECEMBER 6, 2024

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