



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

% Date of Decision: 22.05.2024

+ **CRL.M.C. 4253/2024, CRL.M.A. 16136/2024 and**
CRL.M.A. 16137/2024

VEENA MALHOTRA

..... Petitioner

Through: Mr.Pallav Gupta, Mr.Ravin Rao,
Mr.Akshit and Mr.Ayan Sharma,
Advocates

Versus

GURMINDER SINGH

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner seeks quashing of the complaint case No. 10564/2023 titled as 'Gurminder Singh vs Veena Malhotra' pending before learned MM (NI Act), Patiala House Courts, Delhi as well as the proceedings emanating therefrom.

2. Facts, as discernible from the record, are that the respondent/complainant and petitioner/accused and her husband were known to each other. It is stated that in May 2018, the petitioner alongwith her husband approached the respondent for a loan and offered to pay 2% interest on the aforesaid loan amount. The respondent agreed and advanced certain sums at different times. Admittedly, the interest was paid regularly till October 2019. It is further stated that the petitioner, who had stood as a guarantor, issued a post-dated cheque bearing No. 000015 dated 17.04.2023



for an amount of Rs.15,00,000/-. The said cheque, when presented for encashment, was dishonoured with the remark 'kindly contact drawer/drawee' vide return memo dated 25.04.2023. A demand notice dated 16.05.2023 was issued and upon petitioner's failure to repay the amount due under the cheque, the subject complaint case came to be filed.

3. Learned counsel for the petitioner contended that the petitioner had only stood as a guarantor, as is also mentioned in the subject complaint and that she had no transaction whatsoever with the respondent. It is further submitted that proceedings for recovery of the aforesaid loan amount have already been initiated against the husband of the petitioner and thus, continuation of the present proceedings against the petitioner would be an abuse of the process of law.

He has further referred to the notice framed under Section 251 Cr.P.C., wherein the petitioner had clearly stated that while the subject cheque was drawn on the account maintained by her and bore her signature, the other particulars were not filled by her. She has further alleged that the subject cheque was handed over to her husband and that she was unaware as to how the same came to be in possession of the respondent.

4. At the outset, it must be noted that the petitioner, at the time of framing of notice under Section 251 Cr.P.C., has herself acknowledged/admitted the factum of issuance of cheque from an account maintained by her as well as the fact that the same bears her signature. She has however stated that she had not filled the other particulars.

5. In regard to the submission relating to filling of particulars, the said issue is no longer *res integra*. The Supreme Court, in various decisions, clearly laid down that even in such situations, Section 138 NI Act would be



attracted. In Bir Singh v. Mukesh Kumar¹, it has been observed that:-

“33. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.”

6. The said legal position has been reiterated by the Supreme Court in Oriental Bank of Commerce v. Prabodh Kumar Tewari² and K. Ramesh v. K. Kothandaraman³. In Oriental Bank of Commerce (Supra), the Supreme Court observed:-

“18. For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque cannot be rebutted merely by the report of a hand-writing expert. Even if the details in the cheque have not been filled up by drawer but by another person, this is not relevant to the defense whether cheque was issued towards payment of a debt or in discharge of a liability.

19. Undoubtedly, it would be open to the respondents to raise all other defenses which they may legitimately be entitled to otherwise raise in support of their plea that the cheque was not issued in pursuance of a pre-existing debt or outstanding liability.”

7. What can be culled out from the discussion above is that the mere fact that the particulars were filled by a person other than the drawer itself does not absolve him/her of the liability under Section 138 NI Act. However, the

¹ (2019) 4 SCC 197

² 2022 SCC OnLine SC 1089



drawer is at liberty to raise all other defence including the defence that the cheque was not issued towards a legally enforceable debt or liability.

8. Insofar as the other contentions raised by the petitioner are concerned, before dealing with them, it would be apposite to reiterate the legal position qua offences under Section 138 NI Act. An offence under Section 138 NI Act is made out, when the conditions stipulated in the proviso to Section 138 are satisfied. The first condition is that the cheque, which has been drawn on an account maintained by the drawer, ought to be 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. The second condition is that the payee or the holder in due course of the cheque, as the case may be, must make a demand for the said money by giving a notice in writing to the drawer of the cheque within 30 days of receiving the information from the bank regarding the dishonour of the cheque. The third condition states that there should be a failure on the part of the drawer of cheque to make the payment of the amount under the cheque to the payee or the holder in due course, as the case may be, within 15 days of the receipt of the said notice. When all these three conditions are fulfilled, then only an offence under Section 138 of the NI Act can be said to have been committed by the person issuing the cheque [Ref: MSR Leathers v. S. Palaniappan & Anr.⁴, Charanjit Pal Jindal v. L.N. Metalics⁵ and N. Harihara Krishnan v. J. Thomas⁶.]

9. Petitioner's contention that she was a guarantor does not merit consideration of the Court at this stage inasmuch as she is proceeded against

³ 2024 SCC OnLine SC 531

⁴ (2013) 1 SCC 177

⁵ (2015) 15 SCC 768

⁶ (2018) 13 SCC 663



in her capacity as drawer of the subject cheque. At the time of framing of notice under Section 251 Cr.P.C., the petitioner stated as under:-

“The cheque in question is drawn on account maintained by me and bears my signature. No other particular apart from the signatures has been filled by me. The cheque was handed over to my husband and I do not know how the same has come into possession of the complainant. I know the complainant through my husband, however, I do not have any financial transaction with him. I do not owe any liability to the tune of the cheque amount towards the complainant. The fact of dishonour of the cheque is not within my knowledge, however, the same is also not disputed. I did not receive the legal demand notice, however, the address mentioned therein is one of my correct addresses.”

10. The aforesaid extract makes it clear that the petitioner acknowledges the factum of cheque being drawn on her account, her signature and the further factum that it was dishonoured. She also acknowledges that the legal demand notice bears her correct address. In light of the aforesaid, prima facie, the presumption under Section 139 NI Act arises in favour of the respondent. By the aforesaid contention, the petitioner seeks to argue that she has no legally enforceable debt or liability against the respondent. However, considering that presumption under Section 139 NI Act has arisen in favour of the respondent, the petitioner would need to lead evidence in order to substantiate her submission/contention and the same can only be done at the time of trial.

11. Petitioner's other contention that proceedings having already been initiated against her husband for the aforesaid loan amount and the present proceedings are an abuse of process of law, also does not merit consideration by this Court inasmuch as a perusal of the subject complaint as well as the complaint filed against petitioner's husband, copy of which



has been placed on record would show that the subject cheque as well as the cheque issued by the husband of the petitioner were towards part payment of the loan amount. While the petitioner has contended that the loan amount was Rs.15,00,000/-, however, she has not placed on record any document/evidence to substantiate the aforesaid submission. Further, a reading of the complaints would show that no specific loan amount has been mentioned. In light of the aforesaid, the exact loan amount provided by the respondent becomes a question of fact, which would require evidence to be led by both sides at the time of trial. It is only once the exact loan amount is determined that petitioner's contention of parallel proceedings being an abuse of process of law can be appreciated and determined.

12. In light of the discussion above, this Court finds no merit in the petition and the same is dismissed. The petition alongwith pending applications is disposed of in the above terms.

MANOJ KUMAR OHRI
(JUDGE)

MAY 22, 2024

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