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

+ **CRL.M.C. 6282/2022 & CRL.M.A. 24613/2022**
SAVITABEN SHANKARBHAI PRAJAPATI

.....Petitioner

Through: Mr. Atul Guleria, Mr.
Aryan Rakesh & Mr.
Pankaj Kumar, Advs.

versus

VINDU GOENKARespondent

Through: Mr. Syed Kamran Ali,
Adv. through V.C.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
03.12.2024

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1. The petitioner is aggrieved by the pendency of the proceedings under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') initiated at the instance of the respondent.
2. Concededly, the signatory of the subject cheque was Prajapati Mahesh Bhai Shankar Bhai. The account, however, from which the cheque was issued was jointly held by the petitioner and Prajapati Mahesh Bhai Shankar Bhai.
3. The petitioner is sought to be made accused on account of holding the said account jointly with Prajapati Mahesh Bhai Shankar Bhai, who happens to be her son.
4. It is no longer *res-integra* that in case the cheque is issued from a joint account, the account holder who has signed the cheque, can only be prosecuted under Section 138 of the NI Act.
5. The Hon'ble Apex Court in the case of *Aparna A. Shah v. Sheth Developers Private Limited and Another* : (2013) 8 SCC 71 held as under:

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“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.”

6. The said legal position is not disputed by the learned counsel for the respondent.
7. In view of the, the present petition is allowed and the petitioner is dropped from the proceedings in CC No.8402/2020.
8. Consequently, the summoning order dated 27.02.2021 is also set aside in regard to the petitioner.
9. It is made clear that this Court has not impeded the learned Trial Court from proceeding further against the other accused persons.
10. The petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

DECEMBER 3, 2024

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