IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

237

CRR-2446-2014 (O&M)
Date of decision: 09.12.2025

Nand Kishore and another

...Petitioner(s)

VERSUS

State Bank of India

...Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Ms. Samridhi Sareen, Advocate for the petitioner(s) (Legal Aid Counsel).

Ms. Kavita Arora, Advocate for
Mr. S.C. Pathela, Advocate for the respondent(s)-Bank.

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VINOD S. BHARDWAJ, J. (Oral)

The present revision petition has been filed against the judgment of conviction and order of sentence dated 23.04.2012 passed by the Special Judicial Magistrate 1st Class, Bathinda, in a complaint case bearing complaint file No.43 dated 12.01.2011 filed under Section 138 of the Negotiable Instruments Act, whereby the petitioners were sentenced to undergo rigorous imprisonment for a period of 01 year with a fine of Rs.500/- each and in default thereof, to further undergo RI for a period of 01 month.

2. Challenge is also to the dismissal of the appeal vide judgment

dated 21.07.2014 passed by Addl. Sessions Judge, Bathinda.

3. At the very outset, counsel for the parties submit that so far as petitioner No.1 Nand Kishore is concerned, he has already undergone the entire sentence and has been released thereafter, hence, the present petition survives only with respect to petitioner No.2-Asha Rani, wife of Nand Kishore (petitioner No.1).

4. Briefly summarized, the facts of the present case are that a complaint under Section 138 of the Negotiable Instruments Act, 1881, had been instituted by the respondent-State Bank of India. The petitioners, Nand Kishore and Asha Rani, had jointly availed a home loan of Rs. 3,40,000/- from the Bank and the necessary documents were executed in support thereof. A cheque No.012526 dated 13.12.2010 had been issued in discharge of the liability for a sum of Rs. 4,12,000/- drawn on the complainant bank. The said cheque was dishonoured for "Insufficient Funds", whereupon a legal notice was served on 15.12.2010. As the payment in question was not made, hence, a complaint under Section 138 of the Negotiable Instruments Act, 1881 was instituted. The incriminating material was denied and even the liability to pay the amount was disputed and denied by them. Parties led their respective evidence.

5. On consideration of the respective evidence and arguments advanced by them, the Special Judicial Magistrate 1st Class, Bathinda convicted the petitioners for commission of offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced them to undergo RI for a period of 01 year with a fine of Rs.500/- each and in default thereof, to further undergo RI for a period of 01 month. Aggrieved thereof, the

petitioners preferred an appeal before the Court of Sessions, and the same was also dismissed vide judgment dated 21.07.2014, passed in Criminal Appeal No.56 dated 23.05.2012, and the judgment of conviction was upheld. Hence, the present revision petition.

6. Learned Legal Aid Counsel appearing on behalf of the petitioner(s) contends that petitioner No.2 was only a co-borrower of the loan and the cheque towards discharge of liability was issued from the account of Nand Kishore. She contends that since petitioner No.2 was not an account holder, she could not have been held liable for the dishonour of the said cheque. Besides, the said main accused-cum-account holder has already undergone the complete sentence. She contends that even though the liability on account of the loan borrowed might be enforceable against petitioner No.2, being a co-borrower, however, as far as the criminal liability regarding the dishonour of the cheque is concerned, she could not have been criminally prosecuted for failure to honour the cheque on presentation since she was not the account holder.

7. Counsel for the respondent-Bank does not dispute that the account No.30402534239, of which the cheque in question had been drawn, was a savings bank account operated solely by Nand Kishore and that petitioner No.2-Asha Rani was neither a joint account holder nor a signatory to the said account.

8. Having heard the counsel for the respective parties and going through the case file, I am of the opinion that once Asha Rani is not the account holder, merely because her signatures might have been put on the cheque, the same would not make her liable since for being prosecuted for

commission of an offence under Section 138 of the Negotiable Instruments Act, 1881, the drawer of the cheque has to be the account holder.

9. A two Judge Bench of the Hon'ble Supreme Court in **Mrs. Aparna A. Shah v. M/S Sheth Developers Pvt. Ltd. , S.L.P (Crl) NO. 9794 of 2010** opined that prosecution can only be initiated against the drawer of the cheque. In this case, the cheque in question was issued by the husband of the appellant before the Hon'ble Supreme Court from their joint account. The said cheque was dishonoured. The relevant extract of the judgment is reproduced hereunder:-

> *"22) 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 name of the appellant and her husband, the fact remains that her husband alone 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.*
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> *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 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.".

10. The expression "on an account maintained by him' under Section 138 was explained in **Bijoy Kumar Moni v. Paresh Manna and Anr, SLP (Crl) no. 13133 of 2024** as:

> *"45. It is of vital importance to understand the import of the expression "on an account maintained by him with a banker" used in Section 138 of the NI Act. The expression, in our considered opinion, describes the relationship between the account holder and the banker. This relationship is fundamental to the application of Section 138. The act of maintaining an account is exclusively tied to the account holder and does not extend to any third party whom the account holder may authorize to manage the account on its behalf. Therefore, any delegation of authority to manage the account does not alter the intrinsic relationship existing between the account holder and the banker as envisaged under the NI Act.".*

11. In the case of **Alka Khandu Avhad vs. Amar Syamprasad Mishra, 2021(2) RCR (Criminal) 286,** the Apex Court rejected the contention of the complainant that the complaint against wife-accused is maintainable as the cheque was issued towards discharge of legal liability of both the accused. The Court observed:

> *"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."

The Court also observed that Section 141 of the Act doesn't apply to individuals.

12. The criminal liability would flow only in case the account holder fails to maintain sufficient balance in the account so as to ensure that the cheque issued by the account holder is honoured on its presentation. Undisputedly, petitioner No.2 is not the account holder; hence, there is no obligation on her to maintain sufficient balance in the said account. Her merely affixing a signature, on the asking of petitioner No.1-Nand Kishore or complainant-respondent/State Bank of India, would not make her vicariously liable, notwithstanding that she is not an account holder. I find that both the Courts failed to appreciate and take into consideration the position in law as expounded under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881. An account is required to be ordinarily maintained by the person holding it and only the drawer of the cheque can be held liable. There is a presumption that the drawer of the cheque also has to be the holder of the account on which such a cheque is drawn. Once the

association of petitioner No.2 with the account itself has not been established, she could not have been held liable for an insufficient balance in the account.

13. The said error goes to the root of the case and vitiates the proceedings against the petitioner No.2 herself.

14. Under the given circumstances, I am of the opinion that the judgments passed by both the Courts suffer from a misappreciation of the position in law and the evidence adduced on record. Consequently, the judgments and orders passed by both Courts are set aside qua petitioner No.2-Asha Rani, wife of Nand Kishore. She is discharged of the offence under Section 138 of the Negotiable Instruments Act, 1881.

15. The instant petition is ***partly allowed***.

16. Pending application(s), if any, stand(s) disposed of.

(VINOD S. BHARDWAJ)
JUDGE

09.12.2025
Mangal Singh

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