IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-64208-2024
Reserved on: 08.08.2025
Decided on: 20th August,2025

Gaurav Lakhani and another …...Petitioners

Versus

Shama Enterprises and others …...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sanjay Jain, Advocate for the petitioners.

Mr. Ankush Rampal, Advocate for respondent No.1.

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SANJAY VASHISTH, J.

1. Petitioners i.e., (i) **Gaurav Lakhani** (arrayed as accused No.4), and (ii) **M/s Vivana International**, through its partner **Gaurav Lakhani** (arrayed as accused No.2), have filed instant petition under Section 528 of the **Bharatiya Nagarik Suraksha Sanhita, 2023**, seeking **quashing of Criminal Complaint No. NACT/6620/2022**, titled as *Shama Enterprises (Complainant) vs. M/s Megaicons Webinos (OPC) Pvt. Ltd. & Others*, filed under Section 138 of the **Negotiable Instruments Act, 1881**.

Petitioners have also challenged the following:

- **Summoning order dated 09.05.2022**, and
- **Order dated 15.07.2024**, whereby the application for discharge of accused No.4 was dismissed.

2. In the said complaint, there are four accused persons/entities:

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i) **M/s Megaicons Webinos (OPC) Pvt. Ltd.**

ii) **M/s Vivana International**

iii) **Ankit Modi @ Ankit Kumar Ranjit Bhai Modi**, shown as the authorized signatory-cum-director of accused No.1 and No.2

iv) **Gaurav Shiv Kumar Lakhani**, authorized signatory/director of M/s Megaicons Webinos (OPC) Pvt. Ltd. and M/s Vivana International

On **16.01.2022**, to discharge their liability, the accused allegedly issued three post-dated cheques:

i)Cheque No. **771621** dated **25.02.2022** for Rs. **2,21,086/-** (Ex. C4)

ii)Cheque No. **771626** dated **02.03.2022** for Rs. **23,210/-** (Ex. C5)

iii)Cheque No. **771622** dated **08.03.2022** for Rs. **8,40,366/-** (Ex. C6)

These cheques were drawn on Account No. 001163400003181, maintained with Yes Bank, Surat, Gujarat. One cheque bearing No. **771621** was dishonoured with the remark "**Drawer's signature differs**," while the remaining two cheques, bearing Nos**. 771626** and **771622**, were dishonoured with the remark "**Payment stopped by drawer".**

3. In the complaint, it has been alleged that accused Nos. 3 and 4 are operating two companies: **M/s Vivana International** and **M/s Megaicons Webinos (OPC) Pvt. Ltd.** It is further alleged that accused Nos. 3 and 4 approached the complainant to take over CNF (Carrying and Forwarding) operations for M/s Vivana International in District Ambala, since the complainant is engaged in pharmaceutical business in Ambala.

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Thereafter, accused Nos. 2, 3, and 4 entered into a **CNF agreement dated 24.07.2021** with the complainant, under which they demanded a **refundable security deposit of Rs. 10 lakhs**, with a commitment to pay **interest @ 7% per annum**. Complainant accordingly transferred the amount through **NEFT**, with Rs. **5 lakhs** being deposited into the account of **M/s Vivana International**, and Rs. **5 lakhs** into the account of **M/s Megaicons Webinos (OPC) Pvt. Ltd.**

As per the agreement, the complainant was also entitled to a **3% commission on monthly sales**, calculated on the taxable amount.

4. After receiving the security deposit, accused supplied products to the complainant for the CNF operations. However, soon thereafter, disputes arose. The accused allegedly failed to send sales personnel, did not pay warehouse rent or office boy's salary, and ultimately stopped fulfilling key obligations under the agreement.

Later, accused Nos. 3 and 4 reportedly informed the complainant that they wished to discontinue the business relationship due to an inability to send salesmen or ensure timely delivery. However, they **assured to return the security amount of Rs. 10 lakhs** and recollect the remaining products.

Subsequently, through email dated **10.01.2022**, accused requested that certain products in the complainant's possession be delivered to another entity, namely **Shivam Computer Accessories**, located in Jammu. Complainant complied, and accordingly, **three invoices** were generated as under:

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i) Invoice No. **SE00285** dated **10.01.2022** for Rs. **2,21,086/-**

ii) Invoice No. **SE00287** dated **10.01.2022** for Rs. **23,210/-**

iii) Invoice No. **SE0286** dated **10.01.2022** for Rs. **8,40,366/-**

In response to the above invoices, accused issued the aforementioned three cheques, which were dishonoured for the reasons already mentioned. Thereafter, complainant issued a **legal notice dated 15.03.2022 (Ex. C-10)** to all the accused. When no payment was received, the complainant filed a **complaint under Section 138 of the NI Act**, pursuant to which the petitioners and other accused were summoned.

5. This is how cognizance was taken by the learned Magistrate. **Vide summoning order dated 09.05.2022**, accused were summoned to face trial under Section 138 of the Negotiable Instruments Act, 1881.

For reference, the summoning order is reproduced herebelow:

> *"Today the case was fixed for arguments on the point of summoning. Arguments heard on the point of summoning. From the material brought on the file, it is prima facie established that the accused in order to discharge his existing liability issued cheque no. 771621 dated 25.02.2022 for Rs. 2,21,086/- Ex.C4, cheque no. 771626 dated 02.03.2022 for Rs. 23,210/- Ex. C5, cheque no. 771622 dated 08.03.2022 for Rs. 8,40,366/- Ex.C6 but the same was dishonoured by the banker of the accused with the remarks "Drawer Signature Differs and Payment stopped by drawer" vide memos Ex.C7, ExC8 and Ex.C9. Legal notice Ex. C10 was also sent to the accused but the payment was not made.*

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> *Since the accused has not made the payment within stipulated period despite service of notice as such there are sufficient grounds to proceed against the accused under Section 138 of the Negotiable Instruments Act, 1881. Let, the accused be summoned for 30.11.2022 through RC on filing of PF, copy of complaint, list of witnesses etc. The notice be issued through all modes. The ahlmad of this court is directed to make a specific mention on the summons that this is a compoundable offence. Dasti summons be given, if desired."*

6. Opening the arguments, learned counsel for the petitioners contended that there is **no legally enforceable liability** on the petitioners to discharge the alleged debt, either partially or fully. Therefore, the cheques in question were neither issued by the petitioners; nor the petitioners are signatories to those cheques. It is only co-accused Nos. 1 and 3, who issued all the cheques to discharge their liability. Consequently, petitioners have been **wrongly arrayed as accused** in the present case.

7. Counsel placed reliance on the judgment of the Hon'ble Rajasthan High Court in '***M/s Tata Finance Ltd. vs. J.S. Fourwheel Motors Pvt. Ltd. and Another', 2002 (2) CivCC 689, Law Finder Doc Id #68305***, to strengthen this submission. It was argued that there is no legal liability specifically attributable to the petitioners, as supported by the absence of their signatures on the cheques.

Another submission advanced on behalf of the petitioners was that even in the complaint, there is no allegation that accused Nos. 2 and 4 were controlling or managing the day-to-day affairs of accused

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No.1. Nor does the complainant allege that the cheques were issued from any joint account of accused Nos. 1 and 2. Counsel further relied upon the judgment of this Hon'ble Court in ***'S.K. Sood vs. Tata Iron and Steel Company Ltd.', 2002 (2) RCR (Criminal) 468, Law Finder Doc Id #9411***, supporting the proposition that without a legally enforceable liability, a person cannot be held liable under Section 138 of the Negotiable Instruments Act.

In support of the submission that no legally enforceable liability exists against the petitioners, counsel further relied upon the judgment of the Delhi High Court in ***'Jitendra Bhati vs. Santosh Devi, 2024 (1) DCR 298, Law Finder Doc Id #2518811'***, submitting that unless such liability is specifically established, the accused cannot be summoned for the offence under Section 138 of the NI Act.

Thus, it was submitted that neither is the complaint maintainable against accused Nos. 2 and 4, nor can the summoning order issued against them be sustained legally.

8. On the other hand, to defend the complaint and the summoning order, Mr. Ankush Rampal, Advocate representing respondent No.1, produced the **CNF Haryana-Punjab Agreement for Vivana International**, executed on **19.06.2021** (Ex. C17) between accused No.2 and the complainant Shama Enterprises. It was submitted that the facts alleged in the complaint are derived from the terms of this CNF agreement. A copy of the agreement was taken on record for perusal.

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Learned counsel for respondent No.1 submits that the material on record demonstrates that accused No.3-Ankit Modi, was not only involved as a Director/authorized signatory of accused No.1 but was also connected to transactions involving M/s Vivana International (accused No.2). This dual role, it is argued, prima facie links him to the transaction in question. In support of this contention, reliance is placed on ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89 (19)**, to contend that question whether accused No.3 was formally a partner or was acting in a representative capacity for M/s Vivana International is a matter that can only be determined after evidence is led by the respective parties. It is, therefore, submitted that such a question of fact cannot be adjudicated in proceedings under Section 482 Cr.P.C.

Further, relying upon the judgment of Hon'ble Apex Court in '***S.P. Mani and Mohan Dairy v. Dr. Snehalatha Elangovan', (2023) 10 SCC 685***, learned counsel argues that the existence of a legally enforceable debt or liability, and the responsibility of the accused persons, are matters which require evidence and cannot be decided at this stage in the present petition. Mr. Ankush Rampal, learned counsel, further submits that the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act, which presume that the cheque has been issued towards a legally enforceable debt unless rebutted, also act as a bar to the quashing of proceedings at the threshold.

Additionally, it is submitted that Section 141 of the Negotiable Instruments Act fastens liability on every person who was in

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charge of and responsible for the conduct of the business of the company at the time of the offence, and such averments have been duly pleaded by the complainant in the complaint.

On the basis of the aforesaid submissions, learned counsel for respondent No.1 contends that the present petition filed under Section 528 of the BNSS, 2023, is liable to be dismissed, as it raises disputed questions of fact by accused Nos. 2 and 4, which cannot be adjudicated at this stage.

9. I have heard the arguments and perused the petition, complaint under Section 138, the impugned summoning order, and other appended documents.

10. All three GST invoices are dated 10.01.2022, which clearly indicate that the parties to the transaction are complainant-Shama Enterprises, and accused No.1 only. Nowhere is the name of accused Nos. 2 and 4 mentioned. The cheques in question (Exhibits C4, C5, and C6) have been issued solely by accused No.1 in favor of the complainant, Shama Enterprises, from its individual account No. 001163400003181 maintained at Yes Bank, Surat, Gujarat.

Upon examining the invoices and the issued cheques, it cannot be assumed that accused Nos. 2 and 4(petitioners herein) have any connection with the issue of the cheque bouncing.

Neither is there any averment in the complaint, nor does it appear from the appended documents, that the petitioners (accused Nos. 2

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and 4) were authorized signatories or had control, management, or day-to-day functioning responsibilities of accused No.1.

11. Along with the complaint, an amended partnership deed dated 30.06.2020(P-4) of accused No.2 has also been appended, wherein there are four partners, namely:

i) Shri Gaurav Shiv Kumar Lakhani,

ii) Shri Krunal Ranjit Bhai Modi,

iii) Shri Rajeshchandra Tota Ram Shakya and;

iv) Shri Raman Aisilal Gangwani.

As per the said partnership deed, "Vivana International" consists of the aforementioned four partners and deals in manufacturing and trading in all kinds of perfumes, deos, air fresheners, vehicle perfumes, essential oils, and other fragrance products, etc.

From the said partnership deed, it is clear that Ankit Modi, i.e., accused No.3, is not connected in any way with accused No.2, M/s Vivana International. Therefore, counsel for the petitioners seems to be correct while arguing that accused No.3 had, in fact, committed fraud by projecting himself as the authorized signatory of M/s Vivana International.

Alternatively, as argued, and appears to be appreciable also is, that accused No.1 is in fact owned by accused No.3, and hence, the impugned summoning order is correct in law insofar as accused Nos. 1 and 3 are concerned. None else seems to be connected in any manner with the

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functioning of accused No.1, either jointly or as its authorized representative, signatory, or partner.

In *S.K. Sood* (supra), paragraph No. 10 reads as under:

> ***"****10. However, as referred to above, there is no allegation in the criminal complaint filed by the complainant-company that the accused-petitioners were incharge of, and were responsible to the company for the conduct of the business of the company. Under these circumstances, in my opinion, even from the allegations made in the criminal complaint, the accused-petitioners could not be prosecuted under Section 138 read with Section 141 of the Act. Reliance in this regard may be placed on the law laid down by the Hon'ble Supreme Court. In the case reported as K.P.G. Nair v. M/s. Jindal Menthol India Ltd., 2000(6) SCALE 578.****"***

In M/s Tata finance (supra), paragraph No.13 reads as under:

> ***"****13. Heard learned counsel for the parties. Perused the order dated 31.7.2000 by which the cognizance has been taken by the trial Court against the petitioner and also perused the provisions of the Act and judgments referred before me as well as the record of the case. It has come out from the record that the cheque was issued by respondent No. 2 M/s. Entel Finance & Leasing Company and not by Tata Finance Company. I have perused the original cheque in the record. The original cheque was issued by M/s. Entel Finance and Leasing Company and not by the Tata Finance Company, therefore, in view of the judgment referred before me and in view of the provisions of Section 138 no case is made out against M/s. Tata Finance Ltd., may be with the connivance of M/s. Entel Finance Company other offence can be made out but not at least under Section 138.****"***

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Similarly in Jitendra Bhati's case (supra), paragraph No.9 to 11 are as under:

> *"**9**. Coming to the second contention, a perusal of the subject cheques would show that the same were signed by Smt. Shalley on behalf of M/s Synergy Earth Movers, which was proprietorship firm and not the present petitioner.*
> ***10.** Concededly, in the present case, Section 141 of the NI Act is not attracted as the same is not an offence by a company. The petitioner was impleaded in his individual capacity. The liability under Section 138 NI Act arises on account of dishonour of cheque issued for the discharge, in whole or in part of any debt or other liability. Further, for initiation of prosecution under Section 138 NI Act, a statutory notice is mandatorily required to be given to the drawer, to make good the payment of the amount mentioned in the cheque and only when the drawer receives a notice and fails to make the payment within the time provided by the Statute, does the dishonour become an offence.*
> ***11**. In the present case, the criminal proceedings initiated by the respondent are liable to be quashed as the learned MM erred in not satisfying himself with this basic prerequisite before issuing summons. The impugned cheques, copy of which have been placed on record, were signed only by Smt. Shalley, and as such, the petitioner is not the signatory of the subject cheques. Even the account from which the cheques were issued was not a joint account.*
> ***12.** Reference in this regard may also be made to the decision of the Supreme Court in Alka Khandu Avhad v. Amar Syamprasad Mishra & Anr. (2021) 4 SCC 675, wherein it was observed:-*
>
> *"xxx*

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> ***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.*
>
> *Xxx"*

> ***13***. *In view of the above, the criminal complaints 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 petitions are allowed and the summoning orders in both of afore noted complaint cases are set aside. The pending applications are also disposed of as in fructuous."*

12. Thus, applying the ratio of the law, discussed in the referred judgments and reproduced hereabove, this Court is of the view that the complaint itself, insofar as it concerns the petitioners (accused Nos. 2 and 4), is not maintainable; the allegations levelled in the complaint are without basis and are rather misconceived. The amended partnership deed dated 30.06.2020(P-4) was registered independently in the name of

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'Vivana International', with a registration certificate dated 27.11.2018, wherein details of the managing authorized partners can also be noticed along with photographs, which are as under:

" Details of Managing /Authorised Partners

Sr. No.	**Name**	**Designation/Status**	**Resident of State**
1.	**Krunal Ranjitbhai Modi**	**Partner**	**Gujarat**
2.	**Rajesh Chandra Shakya**	**Partner**	**Gujarat**
3.	**Raman Aisilal Gangwani**	**Parnter**	**Gujarat**
4.	**Gaurav Shivkumar Lakhani**	**Partner**	**Gujarat**

None of the above mentioned partners are shown to be having any connectivity with accused No.1, as per partnership deed.

13. Even if due weightage is given to the CNF agreement dated 19.06.2021 (Ex. C17), there is no mention therein of accused No.2 and accused No.4 specifically holding any responsibility under the terms of the agreement concerning the business dealings. Further, there is no indication that payment would be made by either of the said companies individually or from any joint account of accused Nos. 1 and 2.

14. The indirect argument advanced by the complainant/respondent No.1, attempting to suggest that accused No.4 was, in fact, the authorized signatory of accused No.2, is wholly unsubstantiated. There is nothing on record either in the partnership documents of M/s Vivana International or otherwise that shows accused No.4 to be a partner or an authorized representative of accused No.2. Even in the complaint filed under Section 138 of the Negotiable

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Instruments Act, there is no such averment attributing such a role to accused No.4.

The second argument that the existence of a legally enforceable debt or liability is a matter to be proved through evidence, would only be relevant if there were a clear and positive case made out in the complaint, and if such allegations were substantiated by preliminary evidence sufficient to establish a prima facie link between the summoned accused and the business of accused No.1, from whose account the cheques in question were issued by accused No.3. No such understanding or agreement, if any ever existed, has been brought on record by the complainant/respondent No.1. Consequently, the judgments relied upon by the complainant are distinguishable and cannot be applied to the facts and circumstances of the present case.

15. In view of the foregoing discussion and the reasons recorded hereabove, I find merit in the submissions addressed by the petitioners (accused No.2 and accused No.4), as opposed to those advanced by the complainant. Accordingly, prayer made in the present petition is allowed. It is held that the complaint, insofar as it pertains to accused No.2 and accused No.4, is not maintainable.

As a result, summoning order dated 09.05.2022, qua the petitioners (accused No.2 and accused No.4), is hereby quashed.

(SANJAY VASHISTH)
JUDGE

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Whether Speaking/Reasoned: **YES/NO**
Whether Reportable: **YES/NO**

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