IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No.17841 of 2021
Reserved on:-24.03.2026
Pronounced on:-06.04.2026
Uploaded on:- 07.04.2026

Whether only operative part of the judgment is Pronounced or the full judgment is pronounced: operative part/full judgment

RAJESH MAHAJAN ALIAS LATI

…Petitioner

Versus

JATINDER SINGH

…Respondent

***CORAM:* HON'BLE MS. JUSTICE MANDEEP PANNU**

Present :- Mr. Vipin Mahajan, Sr. Advocate with
Ms. Manju Fulara, Advocate
for the petitioner.

Mr. S.S. Aviraj, Advocate
for the respondent.

*****

MANDEEP PANNU, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure with a prayer to quash the criminal complaint bearing CIS No. N.I. Act/703/220 dated 08.12.2020 titled as "*Jatinder Singh vs Rajesh Singh*" along-with the summoning order dated 04.01.2021, whereby the petitioner has been summoned to face trial for an offence under Section 138 of the Negotiable Instruments Act.

2. Briefly stated, the case of the complainant is that the accused was having cordial relations with him and, in the first week of November, 2019, approached the complainant for a friendly loan of Rs.10,00,000/-,

which was advanced by the complainant in cash. It is alleged that the accused failed to repay the said amount despite repeated demands and, in discharge of his legally enforceable liability, issued cheque No.055199 dated 14.07.2020 for a sum of Rs.10,00,000/- drawn on Axis Bank Ltd., Pathankot. However, upon presentation, the said cheque was dishonoured with the remarks "Account Closed" vide memo dated 22.07.2020 and again on its re-presentation in September, 2020. Thereafter, the complainant served a legal notice dated 20.10.2020 upon the accused, but despite receipt of the same, the accused failed to make the payment within the stipulated period, leading to the filing of the present complaint under Section 138 of the Negotiable Instruments Act. Thereafter, the statement of the complainant was recorded and, on the basis of the material placed on record, learned Judicial Magistrate Ist Class, Pathankot, vide impugned order dated 04.01.2021, found sufficient grounds to proceed and accordingly, summoned the accused Rajesh Mahajan to face trial for the offence under Section 138 of the Negotiable Instruments Act.

3. It has been contended on behalf of the petitioner that the cheque in question was not issued from any account maintained by him, rather the same pertains to account No.912010040276471 maintained exclusively in the name of his wife, namely Vandana Mahajan. It is submitted that the said account was solely in her individual name and the petitioner is neither the account holder nor a joint holder thereof. It is, further, contended that since the cheque was not drawn on an account maintained by the petitioner, the essential ingredients of Section 138 of the Negotiable Instruments Act are not attracted against him. On this basis, it is

argued that the petitioner cannot be made liable for prosecution under the said provision and the impugned complaint as well as the summoning order deserve to be quashed.

4. Learned counsel for the petitioner has placed reliance upon the judgment titled "***Jugesh Sehgal vs. Shamsher Singh Gogi, reported as 2009 (3) RCR (Criminal) 712***", to contend that where a cheque is issued from an account not maintained by the accused, the essential ingredients of Section 138 of the Negotiable Instruments Act are not fulfilled and no liability can be fastened upon such person.

5. Learned counsel for the respondent, on the other hand, has argued that the plea raised by the petitioner that the account in question belongs exclusively to his wife is a matter of evidence, which cannot be adjudicated in proceedings under Section 482 Cr.P.C. and is required to be determined during the course of trial. It is, further, contended that the petitioner cannot escape his liability merely on technical pleas and that the cheque in question bears his signatures; therefore, he is liable to face trial under Section 138 of the Negotiable Instruments Act. It has also been argued that the petitioner had consciously issued the cheque from the account of his wife and is, now, attempting to wriggle out of his liability on the basis of the said plea, which is not permissible in law.

6. I have heard learned counsel for the parties and have gone through the record with their assistance.

7. The primary question which arises for consideration before this Court is as to whether the proceedings under Section 138 of the Negotiable Instruments Act can be sustained against a person who is not

the account holder of the bank account from which the cheque in question has been issued.

8. A perusal of the record reveals that the bank certificate placed on file clearly shows that the account bearing No.912010040276471 was maintained exclusively in the name of Vandana Mahajan, wife of the petitioner, and the petitioner was neither the sole nor joint account holder of the said account. Further, the copy of the cheque placed on record also reflects that the account pertains to Vandana Mahajan, and her name is specifically mentioned on the cheque. Although the cheque appears to bear signatures attributed to the petitioner, the account from which the cheque has been drawn is not maintained by him.

9. The Hon'ble Supreme Court in ***Jugesh Sehgal vs. Shamsher Singh Gogi*** *(supra)*, has elaborately dealt with the essential ingredients required to constitute an offence under Section 138 of the Negotiable Instruments Act. The Apex Court has categorically held that the foundational requirement for attracting liability under Section 138 is that the cheque must be drawn by a person on an account maintained by him with a banker. It has, further, been observed that unless this primary condition is satisfied, the penal provisions of Section 138 cannot be invoked.

10. The Hon'ble Supreme Court has laid down that the following ingredients are sine qua non for constituting an offence under Section 138 of the Act: firstly, that the cheque is drawn by a person on an account maintained by him; secondly, that the cheque is issued for discharge of a legally enforceable debt or liability; thirdly, that the cheque is presented within the prescribed period; fourthly, that the cheque is returned unpaid by

the bank; fifthly, that a statutory notice is issued by the payee within the stipulated time; and lastly, that the drawer fails to make payment within 15 days of receipt of such notice.

11. Importantly, the Hon'ble Apex Court has clarified that if the cheque is not drawn on an account maintained by the accused, one of the essential ingredients of the offence itself is missing and, in such a situation, continuation of criminal proceedings would be unsustainable in law. In the said case, where the cheque had been issued from an account not belonging to the accused, the complaint was quashed on the ground that the basic requirement of Section 138 was not fulfilled.

12. Thus, the ratio of the afore-said judgment clearly lays down that criminal liability under Section 138 is strictly contingent upon the cheque having been drawn on an account maintained by the accused, and in absence thereof, no offence is made out.

13. In the present case, the very first and foundational ingredient is not satisfied, as the cheque in question has not been drawn on an account maintained by the petitioner. Once this basic requirement is not fulfilled, the prosecution of the petitioner under Section 138 of the Negotiable Instruments Act cannot be sustained.

14. The contention raised by learned counsel for the respondent that this aspect involves disputed questions of fact does not merit acceptance in the peculiar facts of the present case, inasmuch as the documentary material placed on record, i.e the bank certificate and the cheque itself, clearly demonstrate that the account in question does not belong to the petitioner. Such unimpeachable material can very well be

taken into consideration in proceedings under Section 482 Cr.P.C. to prevent abuse of process of law.

15. In view of the above discussion and in the light of the law laid down by the Hon'ble Supreme Court, this Court is of the considered opinion that continuation of criminal proceedings against the petitioner would amount to abuse of process of law.

16. Accordingly, the present petition is allowed. The impugned complaint as well as the summoning order dated 04.01.2021, qua the petitioner, are hereby quashed.

17. All pending applications, if any, also stand disposed of.

(MANDEEP PANNU)
JUDGE

06.04.2026
neetu

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*