2026:AHC:104853

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 19215 of 2007

Madhu Singh

.....Applicant(s)

Versus

State of U.P. and Others

.....Opposite Party(s)

Counsel for Applicant(s) :
Counsel for Opposite Party(s) :

A.F.R.

Court No. - 53

HON'BLE SANDEEP JAIN, J.

1. The instant application has been filed for the following reliefs:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to stay the impugned summoning order dated 03.07.2006 passed in Complaint Case No.958 of 2006 (Hari Om Pathak Vs. Rahul & others) under Section 138 of the N.I. Act, Police Station Kavi Nagar, District Ghaziabad.

It is, further prayed that this Hon'ble Court may graciously be pleased to quash the proceedings of Case No.958 of 2006 (Hari Om Pathak Vs. Rahul & others) under Section 138 of the N.I. Act pending in the court of Special Judge, C.B.I., Ghaziabad."

2. The factual matrix of the case is that the complainant/respondent no. 2, Hari Om Pathak, filed a criminal complaint against the applicant Madhu Singh and co-accused Rahul Thind (her friend) under Section 138 of the Negotiable Instruments Act, 1881, as well as under Section 420 IPC, with the allegations that relations between the complainant and Rahul Thind were very cordial ad due to this, the complainant advanced Rs. 3,00,000/- and Rs. 5,00,000/- in December, 2004 as loan for business purposes, on the assurance that the said amount would be repaid within two months, failing which interest @ 18% per annum would be paid.

3. Relying upon the said assurance, the complainant advanced the aforesaid sum to Rahul Thind. However, upon expiry of the stipulated period, the amount was not repaid. Upon repeated demands, Rahul Thind issued two cheques bearing no. 128736 dated 01.04.2006 for Rs.

3,00,000/- and cheque no. 128733 dated 04.04.2006 for Rs. 5,00,000/-, both drawn on HDFC Bank Ltd., Raj Nagar, Ghaziabad, with an assurance that the same would be honoured upon presentation.

4. Acting upon such assurance, the complainant presented the cheques in his bank account; however, both cheques were dishonoured and returned on 08.04.2006 and 13.04.2006 with the remark that the account of the drawer had been closed.

5. Thereafter, upon receiving information from the bank, the complainant consulted his counsel Shri Dhanesh Kumar Sharma, who advised issuance of a legal notice. Accordingly, a statutory notice dated 05.05.2006 was sent through registered post to both accused persons, which was duly served upon them on 22.05.2006. Despite service of notice, the cheque amount was not paid within the statutory period. Instead, a reply containing incorrect and misleading assertions was sent on 22.05.2006.

6. It is the case of the complainant that accused Rahul Thind, with fraudulent intent and with the object of cheating, obtained the aforesaid amount on false assurances and thereafter, deliberately issued cheques which were dishonoured, and even closed the bank account to evade liability. The accused/petitioner Madhu Singh was also jointly and severally liable to repay the loan. On these allegations, the complaint was instituted on 12.06.2006 before the competent court, to summon and punish the accused for offence under Sections 138,141 of the NI Act and Section 420 IPC and for ordering the accused to pay twice the cheque amount with 18% interest per annum.

7. Before the trial court, the complainant submitted his affidavit in evidence under Section 200 Cr.P.C., and produced relevant documentary evidence - the original cheques bearing nos. 128736 and 128733, bank return memos, postal receipts, and a copy of the legal notice issued under Section 138 of the N.I. Act.

8. Upon consideration of the material on record, the trial court, vide impugned summoning order dated 03.07.2006, summoned the accused persons to face trial only under Section 138 of the N.I. Act. The said order has been challenged only by the accused/applicant Madhu Singh by filing the present application under Section 482 Cr.P.C.

9. Learned counsel for the applicant contended that although the cheques were issued from a joint account maintained by Rahul Thind and Madhu Singh, the same were signed exclusively by Rahul Thind. It is submitted that the applicant Madhu Singh is not a signatory to the cheques and, therefore, no offence under Section 138 of the N.I. Act is made out against her.

10. It is further contended that the present case does not involve vicarious liability under Section 141 of the N.I. Act, which applies only to companies and not to individuals. Hence, only the drawer of the cheque, i.e., the signatory Rahul Thind, can be held liable for dishonour of the cheque.

11. In support of his submissions, learned counsel has placed reliance upon the judgments of the Hon'ble Supreme Court in ***Aparna A. Shah vs. Sheth Developers Pvt. Ltd. & Another (2013) 8 SCC 71***, ***Jugesh Sehgal vs. Shamsher Singh Gogi (2009) 14 SCC 683*** and ***Alka Khandu Avhad vs. Amar Syamprasad Mishra & Another (2021) 4 SCC 675***.

12. Despite sufficient service, none appeared on behalf of the complainant/respondent no. 2.

13. I have heard learned counsel for the applicant and perused the record, as well as the case laws cited.

14. The Apex Court in ***Jugesh Sehgal*** (supra) while elaborately considering the essential ingredients constituting an offence under Section 138 of the N.I. Act, held as under:-.

"12. Section 138 of the Act reads as follows:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or

with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—
(a) the cheque has been 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;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, 'debt or other liability' means a legally enforceable debt or other liability."

13. It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that cheque has been 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;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to

the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act.

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16. The next question for consideration is whether or not in the light of the aforementioned factual position, as projected in the complaint itself, it was a fit case where the High Court should have exercised its jurisdiction under Section 482 of the Code?

17. The scope and ambit of powers of the High Court under Section 482 of the Code has been enunciated and reiterated by this Court in a series of decisions and several circumstances under which the High Court can exercise jurisdiction in quashing proceedings have been enumerated. Therefore, it is unnecessary to burden the judgment by making reference to all the decisions on the point. It would suffice to state that though the powers possessed by the High Courts under the said provision are very wide but these should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist.

18. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. The powers have to be exercised sparingly, with circumspection and in the rarest of rare cases, where the Court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] , Kurukshetra University v. State of Haryana [(1977) 4 SCC 451 : 1977 SCC (Cri) 613] (SCC p. 451, para 2) and State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] .]

19. Although in Bhajan Lal case [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , the Court by way of illustration formulated as many as seven categories of cases, wherein the extraordinary power under the aforestated provisions could be exercised by the High Court to prevent abuse of process of the court yet it was clarified that it was not possible to lay down precise and inflexible guidelines or any rigid formula or to give an exhaustive list of the circumstances in which such power could be exercised.

20. The purport of the expression "rarest of rare cases" has been explained very recently in Som Mittal v. Govt. of Karnataka [(2008) 3 SCC 574 : (2008) 1 SCC (L&S) 910 : (2008) 2 SCC (Cri) 1] . Speaking for the three-Judge Bench, the Hon'ble the Chief Justice said: (SCC pp. 580-81, para 9)

"*9. When the words 'rarest of rare cases' are used after the words 'sparingly and with circumspection' while describing the scope of Section 482, those words merely emphasise and reiterate what is intended to be conveyed by the words 'sparingly and with circumspection'. They mean that the power under Section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression 'rarest of rare cases' is not used in the sense in which it is used with reference to punishment for offences under Section 302 IPC, but to emphasise that the power under Section 482 CrPC to quash the FIR or criminal proceedings should be used sparingly and with circumspection."*

21. Bearing in mind the above legal position, we are of the opinion that it was a fit case where the High Court, in exercise of its jurisdiction under Section 482 of the Code, should have quashed the complaint under Section 138 of the Act."

15. Further, the Apex Court in ***Aparna A. Shah*** (supra), has considered the issue as to whether all joint account holders can be held liable for dishonour of cheque, when a cheque is issued from a joint account. It was held as under:-

"14. In Jugesh Sehgal [(2009) 14 SCC 683 : (2009) 5 SCC (Civ) 482 : (2010) 2 SCC (Cri) 218] , after noting the ingredients for attracting Section 138 on the facts of the case, this Court concluded that there is no case to proceed under Section 138 of the Act. In that case, on 20-1-2001, the complainant filed an FIR against all the accused for the offence under Sections 420, 467, 468, 471 and 406 of the Penal Code, 1860 (hereinafter referred to as "IPC") and there was hardly any dispute that the cheque, subject-matter of the complaint under Section 138 of the NI Act, had not been drawn by the appellant on an account maintained by him in Indian Bank, Sonepat Branch. In the light of the ingredients required to be fulfilled to attract the provisions of Section 138, this Court, after finding that there is little doubt that the very first ingredient of Section 138 of the NI Act enumerated above is not satisfied and concluded that the case against the appellant for having committed an offence under Section 138 cannot be proved.

15. In S.K. Alagh v. State of U.P. [(2008) 5 SCC 662 : (2008) 2 SCC (Cri) 686] this Court held: (SCC p. 667, para 19)

"*19. … If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself. (See Sabitha Ramamurthy v. R.B.S. Channabasavaradhya [(2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621] .)"*

16. In Sham Sunder v. State of Haryana [(1989) 4 SCC 630 : 1989 SCC (Cri) 783] , this Court held as under: (SCC p. 632, para 9)
"9. … The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."

17. As rightly pointed out by the learned Senior Counsel for the appellant, the interpretation sought to be advanced by the respondents would add words to Section 141 and extend the principle of vicarious liability to persons who are not named in it.

18. In the case on hand, we are concerned with criminal liability on account of dishonour of a cheque. It primarily falls on the drawer, if it is a company, then drawer company and is extended to the officers of the company. The normal rule in the cases involving criminal liability is against vicarious liability. To put it clear, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others. For example, Section 141 of the NI Act is an instance of specific provision that in case an offence under Section 138 is committed by a company, the criminal liability for dishonour of a cheque will extend to the officers of the company. As a matter of fact, Section 141 contains conditions which have to be satisfied before the liability can be extended. Inasmuch as the provision creates a criminal liability, the conditions have to be strictly complied with. In other words, the persons who had nothing to do with the matter, need not be roped in. A company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, the officers of the company, who are responsible for the acts done in the name of the company, are sought to be made personally liable for the acts which result in criminal action being taken against the company. In other words, it makes every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of

business of the company, as well as the company, liable for the offence. It is true that the proviso to sub-section (1) of Section 141 enables certain persons to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence. The liability under Section 141 of the NI Act is sought to be fastened vicariously on a person connected with the company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability.

19. It is not in dispute that the first respondent has not filed any complaint under any other provisions of the Penal Code and, therefore, the argument pertaining to the intention of the parties is completely misconceived. We were taken through the notice issued under the provisions of Section 138, reply given thereto, copy of the complaint and the order issuing process. In this regard, Mr Mukul Rohatgi, learned Senior Counsel for the respondent after narrating the involvement of the appellant herein and her husband contended that they cannot be permitted to raise any objection on the ground of concealing/suppressing material facts within her knowledge. For the said purpose, he relied on Oswal Fats and Oils Ltd. v. Commr. (Admn.) [(2010) 4 SCC 728 : (2010) 2 SCC (Civ) 237] , Balwantrai Chimanlal Trivedi v. M.N. Nagrashna [AIR 1960 SC 1292] , J.P. Builders v. A. Ramadas Rao [(2011) 1 SCC 429 : (2011) 1 SCC (Civ) 227] . Inasmuch as the appellant had annexed the relevant materials, namely, copy of notice, copy of reply, copy of the complaint and the order issuing process which alone is relevant for consideration in respect of complaint under Section 138 of the NI Act, the argument of the learned Senior Counsel for Respondent 1 that the stand of the appellant has to be rejected for suppressing of material facts or relevant facts, cannot stand. In such circumstances, we are of the view that the case law relied upon by contesting Respondent 1 is inapplicable to the facts of the present case.

20. Mr Mukul Rohatgi, learned Senior Counsel for Respondent 1, by drawing our attention to the definition of "person" in Section 3(42) of the General Clauses Act, 1897 submitted that in view of the various circumstances mentioned, the appellant herein being wife, is liable for criminal prosecution. He also submitted that in view of the Explanation in Section 141(2) of the NI Act, the appellant wife is being prosecuted as an association of individual. In our view, all the above contentions are unacceptable since it was never the case of Respondent 1 in the complaint filed before the learned Magistrate that the appellant wife is being prosecuted as an association of individuals and, therefore, on this ground alone, the above submission is liable to be rejected. Since, this expression has not been defined, the same has to be interpreted

ejusdem generis having regard to the purpose of the principle of vicarious liability incorporated in Section 141. The terms "complaint", "persons", "association of persons", "company" and "Directors" have been explained by this Court in Raghu Lakshminarayanan v. Fine Tubes [(2007) 5 SCC 103 : (2007) 2 SCC (Cri) 455] .

21. The above discussion with reference to Section 138 and the materials culled out from the statutory notice, reply, copy of the complaint, order, issuance of process, etc. clearly show only the drawer of the cheque being responsible for the same.

22. In addition to our conclusion, it is useful to refer to some of the decisions rendered by various High Courts on this issue.

23. The learned Single Judge of the Madras High Court in Devendra Pundir v. Rajendra Prasad Maurya [2008 Cri LJ 777 (Mad)] , following decisions of this Court, has concluded thus:

"*7. This Court is of the considered view that the above proposition of law laid down by the Hon'ble Apex Court in the decision of Fine Tubes [(2007) 5 SCC 103 : (2007) 2 SCC (Cri) 455] is squarely applicable to the facts of the instant case. Even in this case, as already pointed out, the first accused is admittedly the sole proprietrix of the concern, namely, 'Kamakshi Enterprises' and as such, the question of the second accused to be vicariously held liable for the offence said to have been committed by the first accused under Section 138 of the Negotiable Instruments Act not at all arise." After saying so, the learned Single Judge, quashed the proceedings initiated against the petitioner therein and permitted the Judicial Magistrate to proceed and expedite the trial in respect of others.*

24. In Gita Berry v. Genesis Educational Foundation [(2008) 151 DLT 155] , the petitioner therein was wife and she filed a petition under Section 482 of the Code seeking quashing of the complaint filed under Section 138 of the NI Act. The case of the petitioner therein was that the offence under Section 138 of the Act cannot be said to have been made out against her only on the ground that she was a joint account-holder along with her husband. It was pointed out that she has neither drawn nor issued the cheque in question and, therefore, according to her, the complaint against her was not maintainable. The learned Single Judge of the High Court of Delhi, after noting that the complaint was only under Section 138 of the Act and not under Section 420 IPC and pointing out that nothing was elicited from the complainant to the effect that the petitioner was responsible for the cheque in question, quashed the

proceedings insofar as the petitioner therein.

25. In Bandeep Kaur v. Avneet Singh [(2008) 2 PLR 796] , in a similar situation, the learned Single Judge of the Punjab and Haryana High Court held that in case the drawer of a cheque fails to make the payment on receipt of a notice, then the provisions of Section 138 of the Act could be attracted against him only. The learned Single Judge further held that though the cheque was drawn to a joint bank account which is to be operated by anyone i.e. the petitioner or by her husband, but the controversial document is the cheque, the liability regarding dishonouring of which can be fastened on the drawer of it. After saying so, learned Single Judge accepted the plea of the petitioner and quashed the proceedings insofar as it relates to her and permitted the complainant to proceed further insofar as against others.

26. In the light of the principles as discussed in the earlier paragraphs, we fully endorse the view expressed by the learned Judges of the Madras [Devendra Pundir v. Rajendra Prasad Maurya, 2008 Cri LJ 777 (Mad)] , Delhi [Gita Berry v. Genesis Educational Foundation, (2008) 151 DLT 155] and Punjab and Haryana [(2008) 2 PLR 796] High Courts.

27. 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 the name of the appellant and her husband, the fact remains that her husband alone had 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.***

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."*

(emphasis supplied)

16. The Apex Court in the case of ***Mainuddin Abdul Sattar Shaikh vs. D. Salvi (2015) 9 SCC 622***, held as under:-

"9. From a bare reading of Section 138 of the NI Act, the following essentials have to be met for attracting a liability under the section. The first and foremost being that the person who is to be made liable should be the ***drawer of the cheque*** *and should have* ***drawn the cheque on an account maintained by him*** *with a banker for payment of any amount of money to another person from out of that account for discharge in whole or part, of any debt or other liability. We see that from the bare text of the section it has been stated clearly that* ***the person, who draws a cheque on an account maintained by him, for paying the payee, alone attracts liability****."*

(emphasis supplied)

17. Similarly, the Apex Court in ***Alka Khandu Avhad*** (supra), reiterated that in the case of a joint bank account, only the person who has signed the cheque can be prosecuted for its dishonour. It was held as under:-

"8. We have heard the learned counsel appearing on behalf of the respective parties at length, considered material on record and also considered the averments and allegations in the complaint. It emerges from the record that the dishonoured cheque was issued by original Accused 1 husband of the appellant. It was drawn from the bank account of original Accused 1. The dishonoured cheque was signed by original Accused 1. Therefore, the dishonoured cheque was signed by original Accused 1 and it was drawn on the bank account of original Accused 1. The appellant herein-original Accused 2 is neither the signatory to the cheque nor the dishonoured cheque was

drawn from her bank account. That the account in question was not a joint account. In the light of the aforesaid facts, it is required to be considered whether the appellant herein-original Accused 2 can be prosecuted for the offence punishable under Section 138 read with Section 141 of the NI Act?

9. On a fair reading of Section 138 of the NI Act, before a person can be prosecuted, the following conditions are required to be satisfied:

9.1. That the cheque is drawn by a person and on an account maintained by him with a banker.

9.2. For the payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability.

9.3. The said cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account.

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****.*

11. Now, so far as the case on behalf of the original complainant that the appellant herein-original Accused 2 can be convicted with the aid of Section 141 of the NI Act is concerned, the aforesaid has no substance.

12. ***Section 141 of the NI Act is relating to the offence by companies and it cannot be made applicable to the individuals.*** *The learned counsel appearing on behalf of the original complainant has submitted that "company" means any body corporate and includes, a firm or other association of individuals and therefore in case of a joint liability of two or more persons it will fall within "other association of individuals"*

and therefore with the aid of Section 141 of the NI Act, the appellant who is jointly liable to pay the debt, can be prosecuted. The aforesaid cannot be accepted. Two private individuals cannot be said to be "other association of individuals". Therefore, there is no question of invoking Section 141 of the NI Act against the appellant, as the liability is the individual liability (may be a joint liabilities), but cannot be said to be the offence committed by a company or by it corporate or firm or other associations of individuals. ***The appellant herein is neither a Director nor a partner in any firm who has issued the cheque. Therefore, even the appellant cannot be convicted with the aid of Section 141 of the NI Act.*** *Therefore, the High Court has committed a grave error in not quashing the complaint against the appellant for the offence punishable under Section 138 read with Section 141 of the NI Act. The criminal complaint filed against the appellant for the offence punishable under Section 138 read with Section 141 of the NI Act, therefore, can be said to be abuse of process of law and therefore the same is required to be quashed and set aside."*

(emphasis supplied)

18. The Apex Court in the case of ***Bijoy Kumar Moni vs. Paresh Manna and Another 2024 SCC OnLine SC 3833***, held as under:-

"*39. What invariably follows from a perusal of the aforesaid provisions is that* ***it is only the drawer of the cheque who can be held liable under Section 138. Section 141 is an exception to this scheme of the NI Act and provides for vicarious liability of persons other than the drawer of the cheque in cases where the drawer of the cheque under Section 138 is a corporate person.***

40. The question as to whether a person who was not the drawer of the cheque upon an account maintained by him could be held to be liable for an offence under Section 138 of the NI Act fell for the consideration of this Court in the case of P.J. Agro Tech Ltd. v. Water Base Ltd. reported in (2010) 12 SCC 146. The Court construed the provision strictly and answered the question in the negative. The relevant observations are reproduced hereinbelow:

"11. From the submissions made on behalf of the respective parties, it is quite apparent that the short point for decision in this appeal is whether a complaint under Section 138 of the 1881 Act would be maintainable against a person who was not the drawer of the cheque from an account maintained by him, which ultimately came to be dishonoured on presentation.

xxx xxx xxx

13. From a reading of the said section, it is very clear that in order to attract the provisions thereof a cheque which is dishonoured will have to be drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part of any debt or other liability. ***It is only such a cheque which is dishonoured which would attract the provisions of Section 138 of the above Act against the drawer of the cheque.***

14. In the instant case, the cheque which had been dishonoured may have been issued by Respondent 11 for discharging the dues of Appellant 1 Company and its Directors to Respondent 1 Company and the respondent Company may have a good case against Appellant 1 Company for recovery of its dues before other fora, but it would not be sufficient to attract the provisions of Section 138 of the 1881 Act. The appellant Company and its Directors cannot be made liable under Section 138 of the 1881 Act for a default committed by Respondent 11. An action in respect of a criminal or a quasi-criminal provision has to be strictly construed in keeping with the provisions alleged to have been violated. The proceedings in such matters are in personam and cannot be used to foist an offence on some other person, who under the statute was not liable for the commission of such offence."

41. In Jugesh Sehgal v. Shamsher Singh Gogi reported in (2009) 14 SCC 683, this Court emphasised on the importance of the dishonoured cheque having been drawn by the accused person on an account held in his name for the offence to be made out and held thus:

"*22. As already noted hereinbefore, in Para 3 of the complaint, there is a clear averment that the cheque in question was issued from an account which was nonexistent on the day it was issued or that the account from where the cheque was issued "pertained to someone else". As per the complainant's own pleadings, the bank account from where the cheque had been issued, was not held in the name of the appellant and therefore, one of the requisite ingredients of Section 138 of the Act was not satisfied. Under the circumstances, continuance of further proceedings in the complaint under Section 138 of the Act against the appellant would be an abuse of the process of the court. In our judgment, therefore, the decision of the High Court cannot be sustained."*

42. The aforesaid discussion makes ***it clear that as per the legislative scheme it is***

only the drawer of the cheque who is sought to be made liable for the offence punishable under Section 138 of the NI Act…*"*

(emphasis supplied)

19. From the aforesaid judicial pronouncements, it is evident that Section 141 of the N.I. Act, which deals with vicarious liability, is applicable only to companies and partnership firms and not to individuals. Consequently, joint bank account holders cannot be prosecuted unless they are signatories to the dishonoured cheque.

20. In the present case, it is not disputed that the cheques in question were issued from a joint bank account maintained by Rahul Thind and Madhu Singh. However, it is equally undisputed that the cheques were signed solely by Rahul Thind. Therefore, in light of the settled legal position, the applicant Madhu Singh, not being a signatory to the cheques, cannot be held liable for the offence under Section 138 of the N.I. Act. Moreover, a perusal of the complaint reveals that the allegations are primarily directed against Rahul Thind, and no specific role has been attributed to the applicant Madhu Singh, except that she is jointly and severally liable to repay the loan. Even on this ground, no prima facie case is made out against her.

21. In view of the aforesaid facts and legal position, this Court is of the considered opinion that the trial court erred in summoning the applicant Madhu Singh to face trial under Section 138 of the N.I. Act. The summoning order, to that extent, is unsustainable in law and is liable to be quashed.

22. **Accordingly, the application is allowed.**

23. The proceedings of complaint Case No. 958 of 2006/ New No.1776 of 2024 (*Hari Om Pathak vs. Rahul Thind & others*) under Section 138 NI Act, P.S. Kavi Nagar, District Ghaziabad, pending before the Special Court(NI Act), Ghaziabad, insofar as they relate to the applicant Madhu Singh, are hereby quashed.

24. Interim order, if any, stands vacated.

25. It is made clear that the proceedings against co-accused Rahul Thind

shall continue in accordance with law, and the trial court shall be at liberty to proceed against him, in accordance with law.

(Sandeep Jain,J.)

May 6, 2026
Himanshu