IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(159)

CRM-M-1524-2020 (O & M)
Date of Decision: 10.08.2026

Raj Arya …... Petitioner(s)

V/s

Bijender Singh ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Raman Kumar, Advocate,
for Mr. Yash Dev Kaushik, Advocate,
for the petitioner(s).

Ms. Jasleeen Chahal, Advocate as Amicus Curiae
for the respondent.

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JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition is for quashing of the complaint No.3912 of 2017 dated 08.08.2017 under Section 138 of the Negotiable Instruments Act (Annexure P-1), summoning order dated 09.08.2017 (Annexure P-2), the order dated 04.01.2020 (Annexure P-3) vide which the discharge application has been dismissed and all consequential proceedings arising therefrom qua the petitioner.

2. The brief facts of the case are that the respondent-complainant (hereinafter known as 'the respondent') filed a complaint under Section 138 of the Negotiable Instruments Act (Annexure P-1) against the accused No.3-petitioner/Raj Arya (hereinafter to be known as 'the petitioner') and two

other persons by levelling allegations that the accused made a request to the respondent for a friendly loan of Rs.10 lacs for increasing their NGO business in which they were partners. After receiving the loan amount, they assured the complainant that they would repay the loan. In furtherance thereof, one of the accused, namely, Ashok Kumar issued two cheques bearing Nos.000003 and 000004 dated 22.06.2017 and 12.06.2017 respectively for an amount of Rs.5,00,000/- each. The said cheques came to be dishonoured, leading to the filing of the complaint (Annexure P-1) and consequential summoning order dated 09.08.2017 (Annexure P-2). An application for discharge was filed which was dismissed vide order dated 04.01.2020 (Annexure P-3).

3. The aforementioned complaint (Annexure P-1), summoning order dated 09.08.2017 (Annexure P-2) and the order dated 04.01.2020 (Annexure P-3) are under challenge in the present petition.

4. The learned counsel for the petitioner contends that the petitioner alongwith two other persons, namely, Ashok Kumar, the signatory of the cheques No.00003 and 000004 and Hasim Khan have been summoned to face Trial. However, later, the counsel for the complainant made a statement that he did not wish to proceed against Hasim Khan, who was given up as an accused. The cheques in question have been issued and signed by Ashok Kumar from his personal account. The petitioner is neither the member of any NGO nor is a partner with Ashok Kumar. Therefore, the complaint dated 08.08.2017 (Annexure P-1), summoning order dated

09.08.2017 (Annexure P-2), order dated 04.01.2020 (Annexure P-3) and all the consequential proceedings arising therefrom are liable to be quashed qua him. Reliance is placed on ***'Alka Khandu Avhad versus Amar Syamprasad Mishra & anr. 2021(2) RCR (Criminal) 286'.***

5. The learned Amicus Curiae for the respondent, on the other hand, contends that it would be a moot point during the course of the Trial as to whether the petitioner is a partner with Ashok Kumar. The said fact cannot be adjudicated upon in summary proceedings under Section 528 BNSS (Section 482 Cr.P.C.). Therefore, the present petition is liable to be dismissed.

6. I have heard the learned counsel for the parties.

7. Section 138 of the Negotiable Instruments Act reads as under:-

> ***138. Dishonour of cheque for insufficiency, etc., of funds in the account.—***
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> *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 provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:*
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> 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.]

8. Section 141 of the Negotiable Instruments Act reads as under:-

Section 141. Offences by companies--

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has beencommitted by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section, —

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

9. The Hon’ble Supreme Court in the case of ***‘Alka Khandu Avhad versus Amar Syamprasad Mishra & anr. 2021(2) RCR (Criminal) 286’,*** has held as under:-

2. That respondent No. 1 herein has filed a criminal complaint against the appellant and her husband for the offences punishable under Section 138 r/w section 141 of the NI Act in the Court of the learned Metropolitan Magistrate, 43rd Court at Borivali, Mumbai, which has been numbered as C.C. No. 2802/SS/2016. That respondent No. 1 - original complaint (hereinafter referred to as 'the original complainant') is a practicing advocate and partner in a solicitor firm in Mumbai. As per the case of the complainant, both the accused who are husband and wife, approached the original complaint in a legal matter. That the original complainant assisted accused Nos. 1 and 2 in preparing replies and notice of motion, conference, coordinating with counsel, filing Vakalatnamas and appearing *through advocates' office and also as counsel in Summary Suit. That the original complainant raised a professional bill for the legal work done by him to represent accused Nos. 1 and 2 in the legal proceedings. That, thereafter, original accused No. 1 - husband of the appellant herein handed over to the complainant a postdated cheque dated 15.03.2016 bearing No.227050 drawn on Union Bank of India for Rs. 8,62,000/-. The said cheque was presented for encashment and the same came to be returned unpaid with the endorsement "funds insufficient". That, thereafter, the original complainant served a legal notice dated 21.05.2016 calling upon the accused to pay the amount of Rs. 8,62,000/- within 15 days from the date of receipt of the said notice. That the said notice was duly served upon the accused, however, the accused neither replied the said notice nor made the payment of the aforesaid dishonoured cheque. Therefore, the complainant filed a complaint against both the accused - husband and wife for the offence punishable under section 138 of the NI Act. That the learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai directed to issue process against both the accused for the offence punishable under Sections 138 r/w section 141 of the NI Act.*

2.1 That, thereafter, the appellant herein-original accused No.2, wife of the original accused No. 1 filed Criminal Writ Petition No. 2595 of 2019 in the High Court to quash the criminal complaint filed against her mainly on the ground that the appellant was neither a signatory to the cheque dishonoured nor there was a joint bank account.

2.2 It was further submitted that the appellant cannot be prosecuted for the offence punishable under Sections 138 r/w section 141 of the NI Act.

2.3 However, it was the case on behalf of the original complainant that it was the joint liability of both the accused Nos. 1 and 2 to pay the professional bill as the original complainant represented both the accused and therefore considering section 141 of the NI Act, the appellant herein - original accused No. 2 is also liable for the offence punishable under Section 138 r/w section 141 of the NI Act.

2.4 By the impugned judgment and order, the High Court has refused to quash the criminal complaint filed against the appellant, giving rise to the present appeal.

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7. 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:

i) that the cheque is drawn by a person and on an account maintained by him with a banker;

ii) 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; and

iii) 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.

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.*

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

8.1 section 141 of the NI Act is relating to the offence by companies and it cannot be made applicable to the individuals. 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 r/w section 141 of the NI Act. The criminal complaint filed against the appellant for the offence punishable under Section 138 r/w 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.*

9. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order dated 21.08.2019 passed by the High Court in Criminal Writ Petition No. 2595 of 2019 refusing to quash the criminal complaint against the appellant for the offence punishable under Section 138 read with section 141 of the NI Act is hereby quashed and set aside. The complaint case pending in the Court of the learned Metropolitan Magistrate filed by respondent No. 1 - original complainant being C.C. No. 2802/SS/2016 is hereby quashed and set aside. The appeal is allowed accordingly.

10. Coming back to the facts of the present case, there is absolutely no evidence to suggest that the petitioner was a partner with Ashok Kumar so as to invoke vicarious liability under Section 141 of the Negotiable Instruments Act. Admittedly, the cheques are signed by Ashok Kumar and have been issued from an account maintained by him. Therefore, under Section 138 of the Negotiable Instruments Act, it is only Ashok Kumar who can be held liable and not the petitioner-Raj Arya who is neither a signatory of the cheques in question nor a joint holder of the bank account with Ashok Kumar and neither is he a partner with Ashok Kumar in any business.

11. In view of the above, I find considerable merit in the present petition. Therefore, the present petition is allowed and the complaint dated 08.08.2017 (Annexure P-1), summoning order dated 09.08.2017 (Annexure P-2), order dated 04.01.2020 (Annexure P-3) and all consequential proceedings arising therefrom stand quashed qua the petitioner-Raj Arya only.

12. The pending application(s), if any, shall stand disposed of accordingly.

August 10, 2026 **(JASJIT SINGH BEDI)**
sukhpreet **JUDGE**

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