IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(137)

CRM-M-48045-2022 (O & M)
Reserved on: 19.08.2026
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Bhupinder Kaur …... Petitioner

V/s

State of Punjab and anr. ...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Naveen Batra, Advocate,
for the petitioner.

Mr. Athar Ahmed, DAG, Punjab.

Mr. Raj Kumar, Advocate,
for respondent No.2.

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JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for the quashing of the complaint No.NACT-127-2016 dated 14.07.2016 (Annexure P-1), the order dated 07.10.2021 passed by the Sub Divisional Judicial Magistrate, Mukerian, District Hoshiarpur (Annexure P-4) vide which the application for discharge has been dismissed, the order dated 01.10.2022 passed by the Additional Sessions Judge, Hoshiarpur (Annexure P-5) vide which the revision petition against the aforementioned order has been dismissed and all consequential proceedings arising therefrom.

2. The brief facts of the case are that the respondent No.2-complainant/Jagir Singh (hereinafter known as ‘the complainant’) filed a complaint against the petitioner-Bhupinder Kaur and her husband-Avtar Singh with the allegations that in discharge of their liability, four cheques i.e. cheque No.047363 dated 20.05.2016 for a sum of Rs.2 lacs, cheque No.047362 dated 20.05.2016 for a sum of Rs.3 lacs, cheque No.047359 dated 30.04.2016 for a sum of Rs.4 lacs and cheque No.047360 dated 30.04.2016 for a sum of Rs.5 lacs, totalling Rs. 14 lacs had been issued to him all of which came to be dishonoured. A legal notice was sent on 06.06.2016 but as no payment was made, the complaint (Annexure P-1) was filed. Consequent to the filing of the complaint No.NACT-127-2016 dated 14.07.2016 under Section 138 of the Negotiable Instruments Act, 1881 (Annexure P-1), the summoning order was issued.

3. An application for discharge (Annexue P-2) was moved by the petitioner which was dismissed vide order dated 07.10.2021 (Annexure P-4). A revision petition was filed against the dismissal of the application for discharge and the said revision petition came to be dismissed by the Court of the Additional Sessions Judge, Hoshiarpur vide order dated 01.10.2022 (Annexure P-5).

4. The complaint (Annexure P-1), the order dated 07.10.2021 dismissing the discharge application (Annexure P-4), and the order dated 01.10.2022 (Annexure P-5) are under challenge in the present petition.

5. The learned counsel for the petitioner contends that taking the allegations to be correct, the cheques in question have been signed by the husband of the petitioner, namely Avtar Singh and not by the petitioner-Bhupinder Kaur. Merely because the said cheques were issued from a joint account, would not entail culpability of the petitioner in any manner whatsoever. Section 138 of the Negotiable Instruments Act, 1881 makes the drawer of the cheque liable. Therefore, the complaint (Annexure P-1), the order dated 07.10.2021 (Annexure P-4) and the order dated 01.10.2022 (Annexure P-5) and all consequential proceedings arising therefrom are liable to be quashed. Reliance is placed on ***'Mrs. Aparna A. Shah versus M/s Sheth Developers Pvt. Ltd. And another 2013(3) RCR (Criminal) 686*** and ***Alka Khandu Avhad versus Amar Syamprasad Mishra & Anr. 2021(2) RCR 9Criminal) 286'.***

6. The learned counsel for the complainant-Jagir Singh and the learned counsel for the State, on the other hand, contend that it was the petitioner who had handed over the cheques in question from a joint account held by her alongwith her husband-Avtar Singh, though, the cheques were signed by Avtar Singh. Both the petitioner and her husband-Avtar Singh cheated the complaint on the pretext of sending his son-Kuldip Singh to Canada. Therefore, the present petition is liable to be dismissed.

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

8. In ***'Mrs. Aparna A. Shah versus M/s Sheth Developers Pvt. Ltd. And another 2013(3) RCR (Criminal) 686',*** the Hon'ble Supreme Court has held as under:-

> *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.

9. In ***'Alka Khandu Avhad versus Amar Syamprasad Mishra & Anr. 2021(2) RCR 9Criminal) 286',*** the Hon'ble Supreme Court has held as under:-

6. We have heard 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 No. 1 - husband of the appellant. It was drawn from the bank account of original accused No. 1. The dishonoured cheque was signed by original accused No. 1. Therefore, the dishonoured cheque was signed by original accused No. 1 and it was drawn on the bank account of original accused No. 1. The appellant herein-original accused No. 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 No. 2 can be prosecuted for the offence punishable under Section 138 r/w section 141 of the NI Act?

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;
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> 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
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> 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.

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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.*

10. A perusal of the aforementioned judgments would establish beyond doubt that under Section 138 of the Negotiable Instruments Act, 1881, it is the signatory of the cheque alone who is liable even though, the cheque may have been issued from a joint account.

11. In the present case, a bare perusal of the cheques would reveal that the same have been issued from a joint account of Avtar Singh and the

petitioner-Bhupinder Kaur, wife of Avtar Singh. It is the conceded position that the said cheques have been signed by Avtar Singh and therefore, the liability, if any, is of Avtar Singh alone.

12. In view of the above, I find considerable merit in the present petition and therefore, the complaint No.NACT-127-2016 dated 14.07.2016 (Annexure P-1), the order dated 07.10.2021 (Annexure P-4) dismissing the discharge application of the petitioner and the order dated 01.10.2022 (Annexure P-5) passed by the Additional Sessions Judge, Hoshiarpur, dismissing the revision petition against the aforesaid order and all consequential proceedings arising therefrom stand quashed qua the present petitioner-Bhupinder Kaur only. However, the proceedings shall continue against Avtar Singh in accordance with law.

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

August 21, 2026 **(JASJIT SINGH BEDI)**
sukhpreet **JUDGE**

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