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*** IN THE HIGH COURT OF DELHI AT NEWDELHI**

Reserved on: July 19, 2022
Decided on: September 06, 2022

+ CRL.M.C. 437/2019, CRL.M.A. 1895/2019 & CRL.M.A. 13096/2022

JASWEEN SANDHU ….. Petitioner
Through: Mr. Sachin Sood and Mr.Ripin Sood, Advocates.

V

STATE & ANR. …. Respondents
Through: Mr. Ashok Kr. Garg, APP for State/R-1 with SI Deepak Yadav, P.S. Hauz Khas.
Mr. Vivek Sood, Sr. Advocate alongwith Mr. Sundeep Sehgal, Mohd. Kamran and Mr. Akash Godhvani, Advocates for R-2.

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CORAM:
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The present petition is filed under section 482 Code of Criminal Procedure, 1973 (hereinafter referred to as **"the Code"**) for quashing the criminal complainttitled as **Atamjit Singh V Amrit Sandhu Coster & another** bearingCC no 6437 of 2017 and the summoning order dated 03.06.2017 (hereinafter referred to as **"the**

impugned order") passed by the court of Ms. Colette Rashmi Kujur, Metropolitan Magistrate-10, South East, Saket (hereinafter referred to as **"the trial court"**)

2. The factual background necessary to mention for disposal of present petition is that the respondent no.2/ complainant (hereinafter referred to as **"the respondent no 2**) has filed a complaint under section 138 of the Negotiable Instruments Act, 1881 titled as **Atamjit Singh V Amrit Sandhu Coster & another** bearing CC No.6437 of 2017 on allegations that the petitioner (arrayed as the accused no 2 in complaint)and her sister namely Amrit Sandhu Coster (arrayed as the accused no 1 in complaint and is petitioner in Crl. M.C. bearing no 556/2019) issued a cheque bearing no. 329623 dated 06.03.2017 amounting to Rs 20,00,000.00 (Rupees Twenty Lacs Only) drawn on Syndicate Bank, Branch West Punjabi Bagh, Central Market, New Delhi-110026 (hereinafter referred to as **"the cheque in question"**) towards discharge the their liability as detailed in complaint. The respondent no 2 presented said cheque for encashment on 06.04.2017 at HDFC Bank, Branch G.K.-l but was dishonored due to "Payment Stopped by Drawer" as intimated vide return memo dated

11.04.2017. The petitioner and Amrit Sandhu Coster did not pay cheque amount despite notice dated 10.05.2017. The respondent being aggrieved filed the present complaint.

3. The trial court vide impugned order summoned the petitioner and Amrit Sandhu Coster. The impugned order is reproduced as under:-

> **03.06.2017**
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> **Present: Complainant .along with Sh. Sanjay Kothiyal, Adv.**
> **Heard. Record perused.**
> **Cognizance of offence u/s 138 Nl Act taken.**
> **PSE has been led by the complainant.**
> **Vide a separate statement of the complainant, PSE has been closed.**
> **Heard on issuance of process.**
> **In view of the submissions made and documents tendered, this Court is satisfied that there is sufficient material on record to proceed against all the accused. Let summons be Issued against all the accused vide PF/RG/AD/Courier returnable on 09.08.2017. Pf be filed within 02 weeks.**

4. The petitioner being aggrieved filed the present petition and challenged the impugned order. The petitioner pleaded that the petitioner at present is residing at USA and never had any dealing with the respondent No 2. The petitioner entered into an Assured Return Agreement with M/s Cyberwalk Tech Park Private Limited on

16th September, 2011 for the allotment of super area of 1856 Sq. ft. space bearing unit No 802 on the eighth floor of Eco Tower I in the proposed project without involvement of third party. The petitioner never employed services of the respondent no 2. Amrit Sandhu Coster who is sister of the petitioner intimated her that she had also filed a criminal complaint under section 200 of the Code along with an application under section 156 (3) of the Code on allegation that respondent No 2 had cheated her for an amount of Rs. 40 lacs and the court vide order dated 06.07.2015 directed for registration of FIR and accordingly FIR bearing no 734 of 2015 was registered against the respondent no 2. The proceedings under section 82/83 of the Code were ordered to be issued against the respondent no 2. The respondent no 2 filed an application for grant of anticipatory bail which was dismissed vide order dated 13.04.2017 by the court of Additional Sessions Judge, Saket. The respondent no 2 also filed an application for grant of anticipatory bail application before this Court and vide order dated 12.05.2017 was directed to join investigation and to pay Rs. 15 lacs to Amrit Sandhu Coster. The respondent no 2 also filed a Special Leave Petition bearing no 5202-5203 of 2017

before the Supreme Court which was dismissed vide order dated 24.07.2017. The present complaint is not maintainable against the petitioner as it does not disclose any cause of action against the petitioner. There is no legally enforceable debt against the petitioner. The petitioner never issued nor directed her sister, Amrit Sandhu Coster to issue cheque in question in favour of the respondent no 2. The respondent no 2 by impleading the petitioner only wanted to coerce Amrit Sandhu Coster to settle criminal case filed against the respondent no 2.

5. The petitioner challenged impugned order on the grounds that present complaint is perverse and does not disclose any lawful liability or debt towards the petitioner. The petitioner is not the drawer of the cheque in question. The trial court misdirected itself while passing the impugned order. The petitioner is not a joint account holder or vicariously liable with Amrit Sandhu Coster. The cheque in question was not issued by the petitioner but was issued by the sister of the petitioner namely Amrit Sandhu Coster. It was prayed that impugned order be set aside.

6. Section 138 of the Negotiable Instruments Act, 1881 deals with dishonour of cheque. It reads as under:-

> **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 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: 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;**
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> **(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**
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> **(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.

7. The Supreme Court in the case of **Kusum Ingots & Alloys Ltd. V Pennar Peterson Securities Ltd. & others**, (2000) 2 SCC 745 has laid down the following ingredients for taking cognizance under Section 138 of the NI Act:-

(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 for the discharge of any debt or other liability;

(ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn of within the period of its validity whichever is earlier;

(iii) 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;

(iv) 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;

(v) 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.

The Supreme Court in **Jugesh Sehgal V Shamsher Singh Gogi,** (2009) 14 SCC 683 observed that above ingredients 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.

8. The counsel for the petitioner argued that the trial court committed a grave error while passing the impugned order as the petitioner is not the drawer and signatory of the cheque in question. The account from which cheque in question was issued does not belong to the petitioner. The petitioner has been wrongly impleaded as an accused. The petitioner cannot be made liable vicariously with Amrit Sandhu Coster. The petitioner was arrayed as accused No. 2 as per sections 141 and 142 of the Negotiable Instruments Act, 1881which are not applicable in present case. Amrit Sandhu Coster who is the petitioner in Crl.M.C. bearing no 556/2019 has admitted in notice given under section 251 of the Code that she was the signatory of the cheque and has handed over the cheque in question to the respondent no 2 in the year 2011 and issued stop payment instructions to the banker in the year 2011. The counsel for the

petitioner relied on **Alka Khandu Avhad V Amar Syamprasad Mishra and another**, AIR 2021 SC 1616 and **Aprna A Shah V M/s Sheth Developers Pvt. Ltd. &another,** (2013) 8SCC71.

9. The counsel for the respondent no 2 justified the impugned order and argued that the petitioner and her sister Amrit Sandhu Coster issued the cheque in question in favour of the respondent no 2 towards discharge of legally enforceable liability and such the petitioner was rightly summoned by the trial court.

10. The legal issue pertaining to joint or vicarious liability of a person under section 138 of the Negotiable Instruments Act, 1881 has been considered by the various High Courts and the Supreme Court. In **Gita Berry V Genesis Educational Foundation,** 51 (2008) DLT 155 decided by a Coordinate Bench of this court**,** the petitioner/wife filed a petition under Section 482 of the Code seeking quashing of the complaint filed under Section 138 of the Negotiable Instrument Act,1881 on the ground that she was a joint account holder along with her husband. She has neither drawn nor issued the cheque in question and, therefore, according to her, the complaint against her was not maintainable. It was observed that the complaint was only

under section 138 of the Act and nothing was elicited from the complaint to the effect that the petitioner was responsible for the cheque in question and accordingly proceedings were quashed. The Punjab & Haryana High Court in **Bandeep Kaur V Avneet Singh,** (2008) 2 PLR 796, 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. It was further observed that the liability regarding dishonouring of cheque can be fastened on the drawer of it. The Madras High Court in **Devendra Pundir V Rajendra Prasad Maurya, Proprietor, Satyamev Exports S/O Sri Rama Shankar Maurya,** 2008 Criminal Law journal 777 also held that 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.

11. The Supreme Court in **Aparna A. Shah V M/s Sheth Developers Pvt. Ltd. &another**, Criminal Appeal No 813 of 2013 decided on 01st July, 2013 endorsed views expressed by the Madras, Delhi and Punjab & Haryana High Courts and held that it is only the

drawer of the cheque who can be prosecuted under section 138 of the Act. It was held as under:-

> **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. lt cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. Extend the culpability attached to dishonour of a cheque can, in no case "except in case of Section 141 of the N.I. Act" 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. lt 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.**

12. The Supreme Court in **Jugesh Sehgal V Shamsher Singh Gogi** also observed that it is only the "drawer" of the cheque who can be made liable for the penal action under the provisions of the Negotiable Instrument Act, 1881. The Supreme Court in **Alka**

Khandu Avhad V Amar Syamprasad Mishra, AIR 2021 SC 1616and also cited by counsel for the petitioner considered legal issue that whether the appellant who was original accused No. 2 can be prosecuted for the offence punishable under Section 138 r/w Section 141 of the N.I Act?. It was held as under:-

> **6. It emerges from the record that the dishonored 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 dishonored cheque was signed by original accused No. 1. Therefore, the dishonored 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 dishonored 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?**
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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:**
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> **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**
>
> **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 anybody 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.

13. The trial court took cognizance vide impugned order. Section 190 empowers a Magistrate to take cognizance of an offence in certain circumstances. Sub-section (1) reads as under:-

Cognizance of offences by Magistrates.-1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

14. Cognizance is a stage when a Magistrate applies his mind to the suspected commission of an offence. The magistrate has to apply his mind to the facts stated in the police report or complaint before taking cognizance for coming to the conclusion that there is sufficient material to proceed with the case. It cannot be taken in a mechanical or cryptic manner. It is not only against the settled judicial norms but also reflects lack of application of judicial mind to the facts of the case. However a Magistrate is not required to consider the defense of the proposed accused or to evaluate the merits of the material collected during investigation at time of taking cognizance. It is not necessary to pass a detail order giving detailed reasons while taking cognizance. The Supreme Court in **Fakhruddin Ahmad V State of Uttaranchal**, (2008) 17 SCC 157 also held as under:-

> **Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated**

that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender.

15. The case of the respondent no 2 is that the petitioner and Amrit Sandhu Coster in discharge of their liability towards the respondent no 2 handed over cheque in question and promised that the said cheque would be obliged on presentation to discharge their legally enforceable debt.However, the petitioner is not drawer of the cheque in question which is issued and signed by the Amrit Sandhu Coster who is sister of the petitioner and is petitioner in petition bearing no 556/2019. The petitioner is not holder of account bearing no 90112010051035 in Syndicate Bank and is not operational in the name of the petitioner but is operational in name of Amrit Sandhu Coster. Amrit Sandhu Coster in notice under section 251 also admitted that she issued the cheque in question to the respondent no 2 in the year 2011 for my food court business vide proceedings dated 06.02.2019. The liability regarding dishonouring of cheque in question cannot be fastened on the petitioner.

16. The Supreme Court continuously observed that the extraordinary power under Section 482 of the Code should be exercised sparingly and with great care and caution and can be used

to prevent abuse of the process of the Court or to secure ends of justice and the exercise of inherent powers entirely depends on facts and circumstances of each case. Section 482of the code saves the inherent power of the High Court and reads as follows:-

> **Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.**

17. The impugned order cannot be legally sustained qua the petitioner and as such the petition is allowed and impugned order is set aside qua the petitioner. The criminal complaint bearing CC No. 6437 of 2017 titled as **Atamjit Singh V. Mrs Amrit Sandhu Coster & another** also stand dismissed qua the petitioner.

18. The present petition alongwith pending applications, if any, stands disposed of.

SUDHIR KUMAR JAIN
(JUDGE)

SEPTEMBER 06, 2022
N/KG