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PUNJAB AND HARYANA HIGH COURT

SINGLE BENCH

(Before : N.S.Shekhawat, J.)

MUKESH KUMAR

Vs.

HARMINDER SINGH

Criminal Miscellaneous (M) No 41533 of 2023 (O&M)

Decided on : 23-07-2026

Negotiable Instruments Act, 1881 — Sections 138, 141 — Joint account — Prosecution of non-signatory joint holder — Maintainability — Cheque drawn on joint account signed only by petitioner's wife; petitioner, a non-signatory joint holder, summoned solely on basis of joint liability for the loan — Held, only the drawer/signatory of the cheque can be prosecuted under S. 138; joint liability does not extend criminal liability to a non-signing joint account-holder, S. 141 having no application absent a company — Complaint and summoning order quashed qua petitioner alone. [Paras 10-14]

JUDGMENT

N.S.Shekhawat, J.-The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to quash the impugned criminal complaint No.8685 dated 20.04.2021 (Annexure P-1), summoning order dated 23.04.2021 (Annexure P-3) and all subsequent proceedings arising out therefrom. A further prayer has been made to quash the impugned order dated 21.07.2023 (Annexure P-5), whereby, the revision petition filed by the petitioner was ordered to be dismissed.

2. Learned counsel for the petitioner contends that the respondent had filed the impugned complaint (Annexure P-1) by arraying the petitioner as well as his wife Shelly as accused in the complaint. It was averred in the complaint that the petitioner and his wife/both accused were having friendly relations with the respondent for the last many years and they had taken a sum of Rs.24,00,000/- as friendly loan from the respondent. Thereafter, in discharge of their liability, a cheque bearing No.000003 dated 01.03.2021 for a sum of Rs.14,00,000/- drawn on HDFC Bank, Branch The Mall, LGF-1, Ist Mall, Ludhiana from the account No.50100169054894 was issued by Shelly, non-applicant/wife in favour of the respondent/complainant. On being presenting the said cheque, the cheque was dishonoured with the remarks "account closed" and thereafter, a statutory notice was issued to the petitioner as well as his wife Shelly. However, despite the service of a notice on the petitioner and his wife, they did not make the

payment equal to the cheque amount and the respondent/complainant filed the impugned complaint (Annexure P-1) before the Trial Court.

3. By referring to Para No.4 of the impugned complaint (Annexure P-1), learned counsel for the petitioner has vehemently argued that the respondent himself has admitted that the cheque was only signed by Shelly wife of the present petitioner. He further submits that even in the latter part of the complaint, it is admitted by the respondent that the cheque was issued by Shelly, wife of the petitioner in favour of the respondent, in discharge of her legally enforceable liability. He further contends that by completely overlooking the averments made in the impugned complaint (Annexure P-1), the Trial Court had mechanically ordered the summoning of the petitioner under Section 138 of the Negotiable Instruments Act.

4. The petitioner preferred a detailed revision petition before the Sessions Court and again the said argument was highlighted before the Revisional Court. However, the Revisional Court again wrongly observed that in order to discharge their joint legal liability, Shelly wife of the petitioner had issued the cheque in question in favour of the respondent and the same was dishonoured. It was further wrongly observed by the Revisional Court that even though the cheque was not issued by the present petitioner, yet as per the allegations levelled in the complaint, he along with his wife had obtained a friendly loan and he was also liable to be prosecuted by the Trial Court. In support of his arguments, learned counsel for the petitioner has relied upon the law laid down by the Hon'ble Supreme Court in the matter of "**Alka Khandu Avhad Vs. Amar Syamprasad Mishra and Anr., 2021 (2) R.C.R (Criminal) 286**, **Mrs. Aparna A. Shah Vs. M/s Seth Developers Pvt. Ltd. and Anr., 2013(8) SCC 71** and "P.J Agro Tech Limited and Ors. Vs. Water Base Limited, Criminal Appeal No.1357 of 2010, decided 28.07.2010, to contend that since the petitioner is not a signatory of the cheque, he cannot be ordered to be prosecuted in the present case.

5. On the other hand, learned counsel appearing on behalf of respondent submits that the cheque in question was issued by Shelly, wife of the petitioner from her joint account and the cheque was issued in discharge of joint liability of the petitioner and his wife. Consequently, the petitioner cannot escape his liability in the present case and he was also liable to be prosecuted along with his wife. He further contends that the petitioner had already filed a revision petition before the Sessions Court, which already stands dismissed and the second revision petition in the garb of a petition under Section 482 Cr.P.C is not maintainable before this Court.

6. I have heard learned counsel for the parties and perused the record carefully.

7. In the present case, the only short question, which needs to be adjudicated by this Court is whether even in a case of a joint liability, a person who is not the drawer of the cheque, can be prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act and in the considered opinion of the Court, the said issue is no longer res integra and has been settled by the Hon'ble Supreme Court in several judgments, which have been heavily relied upon by the learned counsel for the petitioner, during the course of arguments.

8. Before proceeding any further to adjudicate the issues involved in the present case, it would be appropriate to refer to the statutory provisions of Section 138 of the Negotiable Instruments Act, which reads as under:-

9. Section 138 of the Act refers to the payee or holder in due course of the cheque. It indicates that after the dishonour of the cheque, the drawer of the same could be brought to the dock for the fault committed by him. Section 138 of the Act reads as under:-

> *"138, - Dishonour of cheque for insufficiency, etc., of funds in the account mere 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 pet of 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 -*
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> *(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."*
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> *10. Thus, on perusal of the above, it is clear that it is the drawer of the said cheque, who could be prosecuted under the provisions of Section 138 of the Act, if he fails to make the payment on receipt of the statutory notice. The drawer of the cheque has been defined under Section 7 of the Act, which reads as under:-*
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> *"7 "Drawer", "drawee"- The maker of a bill of exchange or cheque is called the "drawer", the person thereby directed to pay is called the "drawee".*

11. From a reading of the abovestated provisions of law i.e from the plain and unambiguous language of the statute itself, it is apparent that it is the drawer of the cheuqe, who can always be prosecuted under the provisions of Section 138 of the

Negotiable Instruments Act, if he still fails to make the payment even after the receipt of the statutory notice.

12. In the present case also, even the cheque in question has been drawn on a joint bank account of the petitioner and his wife, but, admittedly the cheque has been signed by wife of the petitioner only and as per the statutory provisions of the Act, liability can only be fastened on wife of the petitioner. Still further, this Court also places reliance on the law laid down by the Hon'ble Supreme Court in the matter of "**Alka Khandu Avhad Vs. Amar Syamprasad Mishra and Anr., 2021 (2) R.C.R (Criminal) 286**, wherein, the Hon'ble Apex Court held as under:-

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 in 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.
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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.
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> 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."

13. Still further, it has been held by the Hon'ble Supreme Court in the matter of **Mrs. Aparna A. Shah Vs. M/s Seth Developers Pvt. Ltd. and Anr**.:-

> *"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.*
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> *22. In addition to our conclusion, it is useful to refer to some of the decisions rendered by various High Courts on this issue.*
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> *23. The learned Single Judge of the Madras High Court in Devendra Pundir v. Rajendra Prasad Maurya, 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 Tubes9 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 Foundation11, 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, 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 Madras10 Delhi11 and Punjab and Haryana 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"

14. In view of the above discussion and the law laid down by the Hon'ble Supreme Court, this Court has come to the conclusion that the petitioner can never be prosecuted for the cheque drawn by his wife from the joint account relating to both of them. Thus, the complaint and summoning order are liable to be quashed only qua the petitioner.

15. Still further, the only submission raised by learned counsel for the respondent is that since the revision petition filed by the petitioner has already been dismissed by the Court of Sessions Judge, Ludhiana, the present petition in exercise of its inherent powers under Section 482 Cr. P.C is not maintainable before this Court. However, I again find no merit in the submissions made by learned counsel for the respondent, in view of the law laid down by the Hon'ble Supreme Court in a recent judgment titled as " **Saroj Pandey Vs. Govt.of NCT of Delhi and Others, 2026 SCC Online SC 537**, wherein, the Hon'ble Apex Court held as follows:-

16. 10.This question was determined by a bench of three judges in Krishnan & Anr. v. Krishnaveni & Anr with reference to earlier decision of this Court in Madhu Limaye vs. State of Maharashtra and V.C Shukla vs. State through CBI as follows:

14. In view of the above discussion, we hold that though the revision before the High Court under subsection (1) of Section 397 is prohibited by subsection (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below..." Holding to a similar effect has been given in Dhariwal Tobacco Products Ltd. v. State of Maharashtra, which has been followed and affirmed in Prabhu Chawla v. State of Rajasthan. The relevant extract of the former is as follows:-

> *"6. Indisputably issuance of summons is not an interlocutory order within the meaning of Section 397 of the Code. This Court in a large number of decisions beginning from R.P. Kapur v. State of Punjab [AIR 1960 SC 866] to Som Mittal v. Govt. of Karnataka [(2008) 3 SCC 574 : (2008) 2 SCC (Cri) 1 : (2008) 1 SCC (L&S) 910] has laid down the criterion for entertaining an application under Section 482. Only because a revision petition is maintainable, the same by itself, in our considered opinion, would not constitute a bar for entertaining an application under Section 482 of the Code. Even where a revision application is barred, as for example the remedy by way of Section 115 of the Code of Civil Procedure, 1908, this Court has held that the remedies under Articles 226/227 of the Constitution of India would be available. (See Surya Dev Rai v. Ram Chander Rai [(2003) 6 SCC 675] .) Even in cases where a second revision before the High Court after dismissal of the first one by the Court of Session is barred under Section 397(2) [Ed.: The intended provision seems to be Section 397(3). In this regard See (1) Krishnan v. Krishnaveni, (1997) 4 SCC 241 : 1997 SCC (Cri) 544; (2) Puran v. Rambilas, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124; (3) Kailash Verma v. Punjab State Civil Supplies Corpn., (2005) 2 SCC 571 : 2005 SCC (Cri) 538.] of the Code, the inherent power of the Court has been held to be available.*
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> *7. ...The inherent power of the High Court is not conferred by statute but has merely been saved thereunder. It is, thus, difficult to conceive that the jurisdiction of the High Court would be held to be barred only because the revisional jurisdiction could also be availed of".*

17. In view of the above observations and the law laid down by the Hon'ble Supreme Court, the present petition is allowed and the impugned criminal complaint No.8685 dated 20.04.2021 (Annexure P-1), summoning order dated 23.04.2021 (Annexure P-3) and all consequential proceedings arising out therefrom are liable to be quashed qua the petitioner only.

18.Pending application(s), if any, stand(s), disposed of, accordingly.