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PUNJAB AND HARYANA HIGH COURT

SINGLE BENCH

(Before : Manisha Batra, J.)

RANJIT SINGH

Vs.

DARSHNA DEVI

Criminal Miscellaneous (M) No 61379 of 2023 (O&M)

Decided on : 24-07-2026

Negotiable Instruments Act, 1881 — Sections 138, 141, 142 — Prosecution of signatory without arraigning company — Maintainability — Cheque admittedly drawn on account of an LLP of which petitioner was designated partner, complaint filed against petitioner alone without arraigning the LLP — Held, commission of offence by the company is sine qua non for vicarious liability under S. 141; prosecution of director/signatory alone, without arraigning company, impermissible as vicarious liability cannot exist in isolation — Complaint and summoning order quashed qua petitioner for non-arraignment of principal offender. [Paras 8-12]

JUDGMENT

Manisha Batra, J.-The present petition has been filed under Section 482 Cr.P.C. seeking quashing of Complaint No. NACT/158/2023 dated 02.02.2023 titled Darshna Devi v. Ranjit Singh filed under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short 'N. I. Act'), pending before the Court of learned Judicial Magistrate First Class, Sangrur, along with the summoning order dated 02.02.2023 and all consequential proceedings arising therefrom.

2. Brief facts of the case relevant for the purpose of disposal of present petition are that the aforementioned complaint has been filed by the respondent alleging therein that the petitioner had borrowed a sum of Rs. 1,85,000/- in connection with a business transaction. In discharge of the said liability, the accused allegedly issued cheque No. 000735 dated 01.10.2022 for an amount of Rs. 1,85,000/-. Upon presentation, the cheque was dishonoured on 26.12.2022 with the remarks "Funds Insufficient". Thereafter, a legal notice dated 04.01.2023 was served upon the petitioner demanding payment of the cheque amount. Despite expiry of the statutory period, the payment was not made by the petitioner, thereby compelling the respondent/complainant to file the impugned complaint.

3. After recording preliminary evidence, the learned trial Court, vide order dated 02.02.2023, summoned the petitioner to face trial. Aggrieved thereof, the present petition has been filed.

4. It is argued by learned counsel for the petitioner that the impugned complaint and the summoning order are wholly unsustainable in the eyes of law. It is argued that the cheque in question was never issued by the petitioner in his personal capacity but was issued on behalf of Spacium Store LLP, of which the petitioner is a designated partner/authorized signatory. The bank account on which the cheque was drawn admittedly belongs to the LLP/company, as is evident from the certificate issued by the Ministry of Corporate Affairs and the account details placed on record. It is further argued that despite the cheque having been drawn on the account of the LLP/company, the complainant chose to array only the petitioner as an accused and failed to implead the company itself. In the absence of the company being arraigned as an accused, the prosecution against the petitioner alone is legally impermissible in view of Section 141 of the N. I. Act. Hence, it is urged that the petition deserves to be allowed and the impugned complaint along with all the subsequent proceedings including the summoning order is liable to be quashed.

5. Though, the respondent was initially represented through her counsel but there has been no representation on her from the last several dates of hearing.

6. This Court has heard the submissions made by learned counsel for the petitioner and has gone through the material placed on record.

7. It is well settled proposition of law that a complaint can be quashed and an order of issuance of summons can be interfered with by this Court by invoking powers under Section 482 of Cr.P.C. (which corresponds to Section 528 of BNSS), however, at the same time, it is also to be kept in mind that the inherent jurisdiction under Section 482 is to be exercised sparingly and with caution only when such exercise is justified by the test specifically laid down in the section itself. It is well settled proposition of law that an appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of this power and the inherent powers so vested do not confer any arbitrary jurisdiction upon the High Court to act according to whims and caprices.

8. On applying the above mentioned proposition of law to the facts of the present case, it is to be seen as to whether the complaint as lodged by the respondent and the impugned order are liable to be quashed or not? The main thrust of the arguments address by learned counsel for the petitioner is that the cheque in question was not issued by him in his personal capacity. Rather, the same was issued on behalf of the company but the complainant has arrayed him only as accused in the impugned complaint and the company has not at all been arrayed as accused. The petitioner had not borrowed disputed amount from the respondent in his personal capacity. He had no legally enforceable liability towards the respondent and as such the complaint could not be filed against him. The arguments raised by learned counsel for the petitioner have merit. Reliance can be placed upon three-Judge Bench judgment of the Hon'ble Supreme Court in Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661, wherein it was conclusively settled that Section 141 of the N. I. Act postulates commission of an offence by the company as a sine qua non for fastening criminal

liability upon persons in charge of its affairs and there cannot be prosecution of directors or officers alone, without prosecuting the company, as vicarious liability is a legal fiction that cannot exist in isolation.

9. Reliance can also be placed upon **National Small Industries Corporation Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330**, wherein Hon'ble Supreme Court has held that Section 141 of the N. I. Act does not create substantive liability but only extends criminal liability by way of a legal fiction, which cannot operate in the absence of the principal offender, namely the company. The Court cautioned that criminal law being penal in nature must be strictly construed and any deviation from statutory requirements would render the prosecution invalid. Reference can also be made to **K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48**, wherein Hon'ble Supreme Court had held that while certain categories of persons such as Managing Directors may be presumed to be in charge of the company, such presumption cannot survive once the company itself is not before the Court as an accused. The existence of the company as an accused is the legal bedrock upon which all presumptions under Section 141 of the N. I. Act rest.

10. It has been consistently held by the Hon'ble Supreme Court as well as by different High Courts that where a cheque is issued on behalf of a company, the company is the principal offender and the criminal liability of directors, officers or authorized signatories arises only by application of Section 141 of the N. I. Act, which creates a statutory fiction of vicarious liability. Such vicarious liability cannot exist independently and presupposes the arraignment of the company as an accused. In the absence of the company being prosecuted, the very substratum of the complaint stands vitiated. Reliance can also be placed upon **Bijoy Kumar Moni v. Paresh Manna and another, 2024 INSC 2024**, wherein Hon'ble Supreme Court, while referring to **Aneeta Hada's case** (supra), has reiterated that commission of an offence by the company is a sine qua non for invoking Section 141 of the N. I. Act. It was categorically held that directors or officers cannot be prosecuted alone without prosecuting the company, except in cases where prosecution of the company is legally barred. Similar view had been taken by the Hon'ble Supreme Court in **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89** and **Anil Gupta v. Star India Pvt. Ltd., (2014) 10 SCC 373**.

11. In view of the ratio of law laid down by the Hon'ble Supreme Court in aforecited judgments, it is well settled that where a cheque is issued on behalf of a company, the company is the principal offender and prosecution of directors or officers in their individual capacity is not maintainable unless the company is arraigned as an accused. The vicarious liability contemplated under Section 141 of the N. I. Act is a statutory fiction which cannot be invoked in the absence of prosecution of the company, except where such prosecution is legally barred. On applying the aforesaid settled principles to the facts of the present case, it emerges from the complaint itself that the cheque in question was not issued by the petitioner in his personal capacity, but was drawn on behalf of the aforementioned company, of which the petitioner was a designated partner/authorized signatory. A bare perusal of the impugned complaint would show that the company has not been arrayed as an accused in the complaint. There are also no specific averments in the complaint to indicate any legally enforceable personal liability of the petitioner towards the respondent. In the light of the ratio laid down in the

aforesaid judgments, the non-arraignment of the company, who is the principal offender, strikes at the very root of the maintainability of the complaint. The continuation of proceedings against the petitioner alone, in the absence of the company and the other signatory-Director, is clearly impermissible in law, as the statutory requirements of Sections 138 and 141 of the N. I. Act stand unfulfilled.

12. Consequently, this Court is of the considered opinion that the impugned complaint and the summoning order cannot be sustained and deserve to be set aside as the prosecution is founded on a complaint which is not maintainable in view of the settled legal position. Accordingly, finding merit in the present petition, the same is allowed. The impugned complaint as well as summoning order dated 02.02.2023 along with all the subsequent proceedings having emanated therefrom are hereby quashed qua the petitioner.