

HIGH COURT OF DELHI

Bench: Justice Manoj Kumar Ohri

Date of Decision: 02.02.2024

CRL.M.C. 2067/2023 and CRL.M.A. 7841/2023

NEETA GUPTA ...PETITIONER

VERSUS

SUMAN ANAND ...RESPONDENT

Legislation:

Section 482 of the Cr.P.C.

Article 227 of the Constitution of India

Section 138 of the Negotiable Instruments Act

Subject:

Petition under Section 482 Cr.P.C. and Article 227 of the Constitution for quashing of a complaint under Section 138 of the Negotiable Instruments Act involving dishonored cheque.

Headnotes:

Quashing of Complaint Case No.19930/2016 under Section 138 NI Act - Petitioner, Neeta Gupta, seeks quashing of complaint filed by Suman Anand, alleging dishonored cheque of Rs.20,00,000/- - Petitioner claims no involvement as the cheque was signed solely by her late husband and she did not receive the statutory demand notice - Respondent alleges refusal by petitioner to accept notice - Matter of receipt of notice deemed suitable for trial [Paras 3-5].

Legal Framework under Section 138 NI Act - Criteria include cheque drawn for discharge of any debt or other liability, dishonored by the bank, and subsequent failure to pay post statutory demand notice - Not applicable if cheque not signed by accused in joint accounts - Supreme Court rulings in *Aparna A. Shah v. Sheth Developers Pvt. Ltd.* & *Alka Khandu Avhad v. Amar Syamprasad Mishra* cited for not prosecuting joint account holder who hasn't signed cheque [Paras 6-10].

Decision - Petition allowed, criminal complaint against petitioner quashed due to absence of her signature on the cheque - Application of Section 138 NI Act deemed misuse of legal process in this context [Para 11].

Referred Cases:

Aparna A. Shah v. Sheth Developers Pvt. Ltd. (2013) 8 SCC 71

Alka Khandu Avhad v. Amar Syamprasad Mishra (2021) 4 SCC 675

Representing Advocates:

Mr. Mohit Chaudhary for petitioner

Mr. Sanjay Gupta for respondent

JUDGMENT

1. By way of present petition filed under Section 482 Cr.P.C. read with Article 227 of the Constitution of India, the petitioner seeks quashing of Complaint Case No.19930/2016 titled "Suman Anand vs Neeta Gupta" instituted under Section 138 of Negotiable Instruments Act (hereafter, '*NI Act*'), pending before learned MM, North-West, Rohini, Delhi.

2. Briefly, from the facts as available from the material placed on record, it is the respondent's case that the petitioner and respondent had been friends and had known each other for about 15 years. Subsequently, on account of some financial difficulty, the petitioner took a friendly loan of Rs.20,00,000/- from the respondent with a promise to repay the same once her financial crisis was over. The loan was given by the respondent vide cheque No.901078 dated 10.09.2013 drawn on State Bank of India, Saraswati Vihar, C-Block, Delhi. The petitioner, in discharge of her debt/liability, issued a cheque bearing No. 023892 dated 08.06.2016 drawn on HDFC Bank, Pusa Road, Bazar Marg, Rajinder Nagar, New Delhi amounting to Rs.20,00,000/-. The said cheque, when presented for encashment was dishonoured with the remarks '*stop payment*' vide return memo dated 08.06.2016.

3. Thereafter, the respondent issued the statutory demand notice dated 02.07.2016 (sent on 04.07.2016) under Section 138 of Negotiable Instrument Act through Speed Post and Courier. While the notice sent through Speed Post was returned back with the specific remarks "*PANE WALE NE LENE SE MANA KAR DIYA ATAH VAPIS*", the notice sent through courier was received back as "*Refused*". Thus, the notice was duly served upon the petitioner and upon the failure of the petitioner to make good the demand, the complaint under section 138, NI Act came to be filed.

4. The petitioner denies receipt of demand notice and claims that she became aware about the complaint case for the first time in November, 2022. She even denies receipt of any summons. It is further claimed that the subject cheque was issued by her late husband- *Arvind Gupta*. Although the cheque was issued from a joint account but the subject cheque did not bear her signature and thus, the complaint filed against her was not maintainable. It is further submitted that the amount provided by the respondent was adjusted as part sale consideration towards sale of a flat bearing no. C-703, measuring 1770 sq.ft. situated at Ansal Heights, Sector-92, Gurgaon, Haryana to the real sister-in-law of the respondent, at the request of the respondent herself.

5. Learned counsel for the respondent, on the other hand, has opposed the petition and submits that the petitioner was liable to pay the aforementioned amount, having taken the same as a friendly loan, with a promise to repay. It is further submitted that the statutory notice dated 02.07.2016 was sent to the petitioner however, she refused to receive the same and thus, it would be deemed that the petitioner was duly served.

6. Before proceeding further, let me recapitulate the legal position involved in the present case. Prosecution under Section 138 of the NI Act requires the following conditions 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.”

7. Concededly, in the present case, Section 141 of the NI Act is not attracted as the offence is not committed by a company. The petitioner has been impleaded in her individual capacity. The liability under Section 138 NI Act arises on account of dishonour of cheque issued for the discharge, in whole or in part of any debt or other liability. Further, for initiation of prosecution under Section 138 NI Act, a prior statutory notice is mandatorily required to be given to the drawer, to make good the payment of the amount mentioned in the cheque and only when the drawer receives a notice and fails to make the payment within the time provided by the Statute, does the dishonour become an offence.

8. In the present case, the issue whether the statutory notice was issued, in view of the factual situation wherein the respondent states that the petitioner refused to accept notice while the petitioner states that no such notice was received, is a matter of trial. However, the complaint case must fail owing to a more fundamental issue. The subject cheque, copy of which has been placed on record, was signed only by petitioner's late husband- *Arvind Gupta*. Although it is conceded that the cheque was issued from an account jointly in the name of the Arvind Gupta and Neeta Gupta (petitioner herein) however, it is a matter of fact that the said cheque is not signed by the petitioner.

9. In the present fact situation, the observations of the Supreme Court in *Aparna A. Shah v. Sheth Developers Pvt. Ltd. & Ors.* (2013) 8 SCC 71 hold value. While dealing with a similar issue wherein the appellant, being a joint account holder, was sought to be proceeded against, it was observed:-

“xxx

28. We also hold that under Section 138 of 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 under Section 138 cannot be used as arm-twisting tactics to recover the amount allegedly due from the appellant... The Court reiterates that it is only the drawer of the cheque who can be made accused in any proceedings under Section 138 of the Act.

xxx”

10. Reference may also be made to the observations of the Supreme Court in *Alka Khandu Avhad v. Amar Syamprasad Mishra & Anr.* (2021) 4 SCC 675, wherein it was observed:-

“xxx

10. 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.

xxx”

11. In view of the above, the criminal complaint filed against the present petitioner is clearly an abuse of process of law and the same is liable to be quashed and set aside. Consequently, the present petition is allowed and the criminal complaint against the petitioner is quashed. Pending application is also disposed of as infructuous.

¹ (2013) 8 SCC 71 ² (2021) 4 SCC 675

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