

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on 13.05.2024
Pronounced on 24.05.2024**

CRM(M) No. 915/2022

Sh. Vaibhav Singh S/o. Dr. Veer
Singh R/o. A-1/204, Milan Vihar,
CGHS-72, IP Extension, East Delhi,
Delhi-110092, Age 42 years

.....Appellant(s)/Petitioner(s)

Through: Mr. Ajay Abrol, Adv.

vs

1. Sh. Taushar Gaind S/o. Sh. Anil
Gaind R/o. H. No. 1 Rama Lane,
Talab Tillo, Jammu

..... Respondent(s)

2. SNP Events and Entertainment
Private Limited Plot No. D-22, Kh.
No. 304/2, 3rd Floor Chahattarpur
Enclave Phase-II, Near 100 Fozota
Road, New Delhi-110074.

3. Sh. Sachin Kumar S/o. Sh. Ram Pyare
R/o. 50, Harshinghpur, Hazipur, Etah,
Uttar Pradesh-207249, Director of
SNP Events and Entertainment
Private Limited Plot No. D-22, Kh.
No. 304/2, 3rd Floor, Chhattarpur
Enclave Phase-II, Near 100 Fozota
Road, New Delhi-110074

Through: Mr. Rohit Kohli, Adv. for No. 1

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The respondent No. 1/complainant has filed a complaint under section 138 Negotiable Instrument Act (for short 'the NI Act') against the petitioner as well respondent Nos. 2 and 3, which is pending adjudication before the court of Special Excise Mobile Magistrate, Jammu (hereinafter to be

CRM(M) No. 915/2022

referred as 'the trial court'). In the complaint, it is stated by the respondent No. 1 that respondent No. 2 is a company, involved in the business of event management whereas respondent No. 3 and the petitioner are the directors of respondent No. 2-company. The respondent No.1 and the petitioner & the respondent No. 3 are known to each other for the past many years and in the month of August 2018, the petitioner approached the respondent No. 1 on behalf of respondent Nos. 2 and 3 for establishing flea market in various malls of National Capital Territory (NCT) of Delhi and Noida and requested a friendly loan for an amount of Rs. 9,50,000/- for purpose of paying an advance rent for opening flea market in Greater India Place Mall, Noida. As the respondent No. 1/complainant knew the petitioner for the last many years therefore, the respondent No. 1-complainant agreed to pay the said amount to them.

2. In the year, 2019, the petitioner and the respondent No. 3 again approached the complainant and sought an additional loan of Rs. 2,00,000/- which was also provided to them. Similarly, on the request of petitioner and respondent No. 3, an additional loan amount of Rs. 5,00,000/- for the survival of respondent No. 2-company, was also provided to the petitioner in presence of respondent No. 3.
3. Further, in the year, 2021, due to COVID pandemic, the respondent No. 1/complainant suffered financial losses and requested petitioner and respondent No. 3 for the payment of Rs. 16.50 lacs. However, the petitioner and respondent No. 3 sought time to pay the loan amount. Yet again in the month of June 2021, the petitioner and respondent No. 3 requested the

CRM(M) No. 915/2022

respondent No. 1/complainant to pay an amount of Rs. 3.66 lacs as the same was to be deposited as an earnest money for an event tender, as such, the total amount became due was Rs. 20.16 lacs and in order to tender his personal assurance, the respondent No. 3 issued a cheque bearing No. 243538 drawn on Yes Bank, Village, Badshahpur, PO Gurgaon-122001. Respondent No. 1/complainant presented the cheque for encashment before the concerned bank but the same was dishonored. The respondent No.1 therefore, served a legal notice dated 29.09.2021 upon the petitioner and respondent Nos. 2 and 3. Thereafter, as the amount due in lieu of dishonored cheque was not paid, the respondent No. 1 filed the complaint against the petitioner and respondent Nos. 2 and 3 under section 138 of the NI Act.

4. The petitioner has filed the present petition for quashing of the order dated 26.11.2021 passed by the learned trial court, whereby the process has been issued against the petitioner for commission of offence under Section 138 NI Act and respondent Nos. 2 and 3 and also for quashing of the proceedings pending before the trial court, to the extent of the petitioner.
5. It is urged by the petitioner that the petitioner has been falsely implicated in the complaint by the respondent No. 1 as the respondent No. 1 was fully aware of the fact that he had ceased to be the Director of the respondent No.2-company with effect from 25.03.2021 and respondent No. 1 deliberately concealed the said fact from the trial court. It is also urged by the petitioner that the cheque has been issued by the respondent No. 3 from his personal account and the same has not been issued in his capacity as

CRM(M) No. 915/2022

director of the respondent No. 2-company, therefore, liability accrued, if any, is only against the respondent No. 3 in his personal capacity and as a director of the company.

6. Mr. Ajay Abrol, learned counsel for the petitioner has vehemently argued that the petitioner has not issued the cheque in question as he has not signed the same and that the cheque has not been issued by the company but by the respondent No. 3, in his personal capacity as such, the petitioner could not have been proceeded against under section 138 of the NI Act.
7. On the contrary, Mr. Rohit Kohli, learned counsel appearing for respondent No. 1 has vehemently argued that the loan was advanced by respondent No. 1 to respondent No. 2 at the request of petitioner and respondent No. 3 and that is why, they have been arrayed as accused in the complaint.
8. Heard and perused the record.
9. This is admitted by respondent No. 1-complainant that the cheque has been issued by respondent No. 3 from his personal account maintained by him. Section 138 of the NI Act lays down that where any cheque has been drawn by a person on an account maintained by him for payment of any amount of money to another person out of that account for discharging any debt or other liability and the said cheque is returned by the bank on account of insufficient balance or that it exceeds the amount arranged to be paid from that account, then such person shall be punished with imprisonment for a terms which may extend to two years, or with fine, which may extend to twice the amount of the cheque or with both.

CRM(M) No. 915/2022

10. Section 141 of the NI Act provides for vicarious liability in the case of commission of offence under Section 138 NI Act by the company and it prescribes that if the person committing an offence under section 138 of the NI Act is a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence.

11. In “**S.P. Mani and Mohan Dairy vs. Dr. Snehalatha Elangovan**” , 2022 **LiveLaw (SC) 772**, it has been held as under:

“Evidently, the gist of Section 138 is that the drawer of the cheque shall be deemed to have committed an offence when the cheque drawn by him is returned unpaid on the prescribed grounds. The conditions precedent and the conditions subsequent to constitute the offence are drawing of a cheque on the account maintained by the drawer with a banker, presentation of the cheque within the prescribed period, making of a demand by the payee by giving a notice in writing within the prescribed period and failure of the drawer to pay within the prescribed period. Upon fulfilment of these requirements, the commission of the offence which may be called the offence of ‘dishonour of cheque’ is complete. If the drawer is a company, the offence is primarily committed by the company. By virtue of the provisions of sub-section (1) of Section 141, the guilt for the offence and the liability to be prosecuted and punished shall be extended to every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of its business; irrespective of whether such person is a director, manager, secretary or other officer of the company. It would be for such responsible person, in order to be exonerated in terms of the first proviso, to prove that the offence was committed without his knowledge or despite his due diligence.

(emphasis added)

12. In the present case, though it is alleged by the respondent No. 1-complainant that at the instance of petitioner, being familiar with him, he provided the amount to respondent No. 2-company as well as the petitioner and respondent No. 3, but this is admitted fact that the petitioner is not the drawer of the cheque and also the cheque has not been issued by the

CRM(M) No. 915/2022

company-respondent No.2 and once the cheque has not been issued by the company, then no liability can be fastened under section 138 NI Act on a person other than the drawer of the cheque. In “**Alka Khandu Avhad v. Amar Syamprasad Mishra &Anr**”, (2021) 4 SCC 675, it has been held as under:

9. 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:

9.1. That the cheque is drawn by a person and on an account maintained by him with a banker.

9.2. 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.

9.3. 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.

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.

11. Now, so far as the case on behalf of the original complainant that the appellant herein-original Accused 2 can be convicted with the aid of Section 141 of the NI Act is concerned, the aforesaid has no substance.

12. Section 141 of the NI Act is relating to the offence by companies and it cannot be made applicable to the individuals. The 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

CRM(M) No. 915/2022

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 read with Section 141 of the NI Act. The criminal complaint filed against the appellant for the offence punishable under Section 138 read with 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.

(emphasis added)

13. In view of the above, this Court is of the considered view that once the cheque has not been issued by the petitioner, but by the respondent No. 3 in the account maintained by him only, the petitioner cannot be prosecuted for the dishonor of the cheque issued by the respondent No. 3. Accordingly, the impugned complaint titled “Tushar Gaiind versus SNP Events and Entertainment Pvt. Ltd. &Ors” pending before the learned Special Excise Mobile Magistrate, Jammu and the proceedings emanating therefrom *qua* the petitioner are quashed.

14. Disposed of.

**(RAJNESH OSWAL)
JUDGE**

Jammu

24.05.2024

Rakesh PS

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No