

---

*Before Mahesh Grover, J.*

GULSHAN KUMAR,—*Petitioner*

*versus*

DR. ALKA ARORA AND ANOTHER,—*Respondents*

CRIMINAL MISC. NO. 799/M OF 2004

24th May, 2006

*Negotiable Instruments Act, 1881—Ss. 138—Dishonour of cheques—Petitioner neither issued cheque nor any transaction attributed to him—Complainant failing to show association of petitioner with the alleged offence—Provisions of S.138 not attracted in the case of petitioner—Petition allowed, complaint and consequent summoning order against petitioner quashed.*

*Held*, that a perusal of Section 138 of the Act shows that a person who issues the cheque which ultimately turns out to be bad is the person on whom the liability can be fastened under the Act. If a cheque has been issued by some other person from his account then in that eventuality nobody except the person who draws this cheque can be held liable. As per the complainant herself the cheque is alleged to have been issued by one Hardeep Singh Chawla, who is the proprietor of M/s Kaka Iron Store. The account from which the cheque has been issued also pertains to M/s Kaka Iron Store. It has not been shown in the complaint as to how the petitioner is associated with the alleged offence. When there is no allegation against the petitioner and it has not been shown as to how he is connected with the commission of the alleged offence and also in view of the fact that the ingredients of Section 138 are not attracted, I deem it a fit case where the complaint and the consequent summoning order ought to be quashed.

(Para 7 & 9)

Puneet Jindal, Advocate. *for the petitioners.*

Yogesh Goel, Advocate. *for respondent No. 1.*

---

**JUDGMENT**

**MAHESH GROVER, J.**

(1) This is a petition for quashing of the complaint dated 7th November, 2001 and the consequent summoning order dated 16th July, 2003. The complaint was preferred by the respondent No. 1 against the petitioner under the provisions of Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act') and Sections 406, 420 and 120-B read with Section 34 I.P.C.

(2) The petitioner has referred to the complaint Annexure P.1 wherein it has been averred by the complainant that she had made a deposit of Rs. 2 lakh in total spread over a period of 40 months by paying in instalments of Rs. 5,000 each month. The amount was paid to the petitioner for organising a committee. The complainant demanded the return of her money after the completion of 40 months period. It is averred that the petitioner told her that the amount has already been paid to Hardeep Singh Chawla, who has also been arrayed as accused No. 1 in the complaint. The complainant thereafter insisted that her amount be returned and upon this Hardeep Singh Chawla, who is accused No. 1 in the complaint, issued a cheque bearing No. 766015, dated 6th October, 2001 for a sum of Rs. 2 Lakh drawn on the Oriental Bank of Commerce, Miller Ganj, Ludhiana from Account No. 303138. The account is stated to be in the name of M/s Kaka Iron Store. The said cheque, however, was returned by the bank with an endorsement that the payment of the cheque has been stopped by the drawer.

(3) It has further been averred in para 6 of the complaint as follows :—

“6. That when accused No. 2 was confronted with the said dishonour of the cheque given by accused No. 1 in discharge of the aforesaid liability, accused No. 2 acknowledged the liability,—*vide* a writing/affidavit dated 13th October, 2001.”

(4) Mr. Puneet Jindal, learned counsel for the petitioner submitted that there are no allegations against the petitioner. The complaint is under the provisions of Section 138 of the Act and Sections 406, 420 and 120-B read with Section 34 of the Indian Penal Code but the petitioner has only been summoned to stand trial under the provisions of Section 138 of the Act. He contended that the cheque

---

was neither issued by the petitioner nor was any transaction attributed to him and, therefore, the provisions of Section 138 would not be attracted *qua* the petitioner. In view of this he prayed that the complaint and the summoning order *qua* him be quashed.

(5) Mr. Yogesh Goel, learned counsel for the respondent No. 1 could not give any satisfactory reply when confronted with the factual aspect that the cheque in question was not signed by the petitioner.

(6) I have heard the learned counsel for the parties and I am of the view that the provisions of Section 138 of the Act for which the petitioner has been summoned to stand trial are not attracted in the case of the petitioner.

Section 138 of the Act is reproduced 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 ;
- (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

- (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) A perusal of the above shows that a person who issues the cheque which ultimately turns out to be bad is the person on whom the liability can be fastened under the Act. If a cheque has been issued by some other person from his account then in that eventuality nobody except the person who draws this cheque can be held liable. In the instant case as per the complainant herself the cheque is alleged to have been issued by one Hardeep Singh Chawla, who is the proprietor of M/s Kaka Iron Store. The account from which the cheque has been issued also pertains to M/s Kaka Iron Store. It has not been shown in the complaint as to how the petitioner is associated with the alleged offence.

(8) Apart from this, Mr. Jindal also pointed out that the police had investigated the matter on the complaint made by respondent No. 1 regarding the same offence and the petitioner was placed in column No. 2 and the challan *qua* said Hardeep Singh Chawla has been filed.

(9) In view of these facts when there is no allegation against the petitioner and it has not been shown as to how he is connected with the commission of the alleged offence and also in view of the fact that the ingredients of Section 138 are not attracted, I deem it a fit case where the complaint and the consequent summoning order ought to be quashed.

(10) Resultantly, the petition is allowed. The complaint dated 7th November, 2001 and the consequent summoning order are hereby quashed.