

Before Harbans Lal, J.

MUKESH KUMAR—Petitioner

versus

PUNJAB STATE ELECTRICITY BOARD—Respondents

Crl. M No.26668 of 2009

11th January, 2010

Negotiable Instruments Act, 1881—S.138—Dishonour of cheques—Cheques neither issued by petitioner nor signed by him—Whether a person being not a drawer or signatory of a cheque can be held liable for conviction u/s 138—Held no—Gross miscarriage of justice that trial Court took cognizance of offence u/s 138 against petitioner and summoned him for standing trial along with others—Petition allowed.

Held. that a plain reading of Section 138 shows that the drawer of the cheque would be liable for punishment for dishonour of the cheque drawn on an account maintained by him in the bank, if such cheque is drawn for a legally enforceable debt or liability. Even assuming that this Section covers cases where a cheque is issued in connection with discharge of a legally enforceable debt or liability of a person other than the drawer of the cheque, the debtor of the drawee is not made liable for the offence under this Section. It is own case of the respondent that Suresh Kumar is the drawer. That being so, the petitioner cannot be held liable under Section 138 of the Act, Hence, the petitioner cannot be held vicariously liable for the offence committed by Suresh Kumar, There does not seem to be any provision under the Act, under which the petitioner could be held guilty of an offence, which has been committed by Suresh Kumar under Section 138 *ibid.* Thus, there appears to be a gross miscarriage of justice that the trial Court took cognizance of the offence under Section 138 of the Act against the petitioner and summoned him for standing trial along with others.

(Para 7)

R.S.Bajaj, Advocate, *for the petitioner.*

Parminder Singh, Advocate, *for the respondent*

HARBANS LAL, J.

(1) This petition has been moved by Mukesh Kumar under Section 482 of the Code of Criminal Procedure (for brevity, the Code) for quashing complaint No. 454/2/09, dated 18th May, 2001 Annexure P-1, summoning order dated 9th August, 2001 Annexure P-2 and the order dated 10th August, 2009 Annexure P-5 whereby the application filed by the petitioner for his discharge has been dismissed and all consequential proceedings flowing therefrom.

(2) The brief facts giving rise to this petition are that Punjab State Electricity Board (hereinafter referred to as the Board) lodged a complaint Annexure P-1 against the petitioner and others under Section 138 of the Negotiable Instruments Act, 1881 (for short the Act) containing the allegations that cheque dated 30th March, 2001 had been signed and issued by Suresh Kumar towards payment of installments of payment of electricity bills. Similarly another cheque dated 27th March, 2001 was also signed and issued by him in lieu of the payment of first installment of the bill for the tariff for the month January, 2001 The only role attributed to the petitioner is that he along with other accused Suresh Kumar had assured that the cheque will be honoured as and when presented for payment. On presentation, both these cheques were dishonoured.

(3) I have heard the learned counsel for the parties, besides perusing the record with due care and circumspection.

(4) The learned counsel for the petitioner submitted with a good deal of force that the petitioner had nothing to do with the commission of the alleged offence and he has been wrongly impleaded therein. He moved an application for discharge before the learned trial Court on 17th December, 2008. However, without appreciating the pleas raised on behalf of the petitioner, the learned trial Court dismissed the same,— *vide* order dated 10th August, 2009 Annexure P-5. A perusal of Section 138 of the Act would reveal that the cheques should have been issued by the accused in discharge of some legal liability, which is missing in the present case. Admittedly, the cheques in dispute have not been issued by the petitioner. The only allegations him is that he had allegedly assured that the cheques on presentation will be honoured, which is factually incorrect as he had not

extended any such assurance. As per the provisions of Section 138 *ibid*. The offence under this Section will be made out only against the drawer of the cheque and not any other person. As per the complaint, the cheques have been issued and signed by Suresh Kumar, though in fact, the same have been issued by M/s Packex Limited which has not been arrayed as an accused. To buttress this stance, he has relied upon **M/s Tata Finance Ltd. versus J.S. Fourwheel Motors Pvt. Ltd. & Anr. (1) G. Surya Prabhavathi versus Nekkanti Subrahmanyeswara Rao (2) and M/s Ancient Investment Pvt. Ltd. versus Kotak Securities (3)** The learned counsel for the respondent countered these arguments by urging that indeed the electricity connection has been issued in favour of the petitioner and furthermore, the offence under Section 420 I.P.C. has been added in the complaint and that being so, no case is made out for quashing the Annexure P-1, Annexure P-2 and Annexure P-5.

(5) I have well considered the rival contentions.

(6) Of course, the offence under Section 420 I.P.C. has also been added in the complaint Annexure P-1, but a glance through the summoning order Annexure P-2 would reveal that the petitioner alongwith others has been summoned to face trial for the offence punishable under Section 138 of the Act only. This order nowhere says that the offence under Section 420 I.P.C. is also made out against the petitioner. It is thus inferrable that the allegations do not spell out the offence under Section 420 I.P.C. There is no gainsaying the fact that the cheques in dispute were issued by Suresh Kumar. At this juncture, the learned counsel for the respondent maintained that Suresh Kumar in connivance with the petitioner being his brother had issued the cheques in question. But to his utter dismay, the impugned order as also the complaint are absolutely silent about the fact that Suresh Kumar is the brother of the petitioner or that he had issued both the cheques in dispute, as Power of attorney holder of the petitioner. Section 138 of the Act reads as under:—

“138. Dishonour of cheque for insufficiency, etc. of funds in the account —Where any cheque drawn by a person on an account

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- (1) 2002 (2) Civil Court Cases 689 (Rajasthan)
 - (2) 1999 (1) R.C.R. (CrI.) 788
 - (3) 1999 (4) R.C.R. (CrI.) 446

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 purpose of this section, “debt or other liability” means a legally enforceable debt or other liability.”

(7) A plain reading of this Section shows that the drawer of the cheque would be liable for punishment for dishonour of the cheque drawn on an account maintained by him in the bank, if such cheque is drawn for a legally enforceable debt or liability. Even assuming that this Section covers cases where a cheque is issued in connection with discharge of a legally

enforceable debt or liability of a person other than the drawer of the cheque, the debtor of the drawee is not made liable for the offence under this Section. It is own case of the respondent that Suresh Kumar is the drawer. That being so, in view of the above reproduced provisions of law, the petitioner cannot be held liable under Section 138 of the Act, In re: G. Surya Prabhavathi (*supra*) the cheque was issued by husband of the petitioner for discharge of the loan obtained from the complainant for purchase of a car. It was held that simply because the car was purchased in the name of the petitioner, it does not fasten liability or punishment under Section 138 of the Act, as the said provisions contemplates of punishment only against the drawer of the cheque and not other. In Annexure P-1 it has been merely mentioned that "all the accused assured that the cheques will be honoured when presented at bank and on their assurance, the complainant received the cheques". A careful delving into this complaint would reveal that there are no specific allegations with regard to the effect that these cheques were issued by Suresh Kumar in connivance with the petitioner. If the matter is viewed in the background of the observations rendered in *M/s Tata Finance Ltd. (supra)* despite that no case is made out under Section 138 of the Act against the petitioner, even if it is assumed that there was connivance between the petitioner and Suresh Kumar. In re: **Partap Singh Yadav and another versus Atal Behari Pandey (4)** the son had issued a cheque to discharge debt of his father. The cheque was dishonoured. It was held that son is liable and not the father. The offence within the purview of Section 138 is committed by the son whose cheque was bounced by the bank on which it was drawn for insufficiency of funds in his account and his subsequent failure to make payment. It is a criminal offence. Only he can be said to have committed an offence according to Section 138. How petitioner No. 1 (referring to the father) had been guilty of an offence under Section 138 of the Act, has not been explained. Coming to the facts of the present one, the petitioner cannot be held vicariously liable for the offence committed by Suresh Kumar. There does not seem to be any provision under the Act, under which the petitioner could be held guilty of an offence, which has been committed by Suresh Kumar under Section 138 *ibid*. Thus there appears to be a gross miscarriage of justice that the trial Court took cognizance of the offence under Section 138 of the Act against the petitioner and summoned him for standing trial alongwith others.

In the impugned order dated 10th August, 2009 Annexure P-5, the learned Judicial Magistrate 1st Class, Jalandhar has observed that “the contention advanced by the learned counsel for the accused Mukesh Kumar that he is not a signatory to the cheque and there fore, not liable cannot be considered at this stage in the absence of evidence. when there is specific averment of the complainant that accused Mukesh Kumar had assured the payment *qua* cheque which was issued for payment of bills for electricity consumption by company in which Mukesh Kumar is a Director.” Palpably the learned trial Court has bypassed the above provisions of Section 138 *ibid* merely by saying so. A glance through this order would reveal that the case of Partap Singh Yadav and another (*supra*) was also cited before the learned trial Court, which without recording specific findings as to how *prima facie* case is made out under Section 138 of the Act against the petitioner, dismissed the application *vide* which the petitioner had sought his discharge from the proceedings.

(8) The upshot of the above discussion is that the petitioner being not a drawer or signatory of the cheques in dispute cannot be held liable for conviction under Section 138 of the Act. Sequelly, the complaint Annexure P-1, the order dated 9th August, 2001 Annexure P-2 and the order dated 10th August, 2009 Annexure P-5 and all consequential proceedings arising therefrom stand quashed.

R.N.R.