

CRM-M-40987-2019 (O & M) 2026:PHHC:091886



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(128)

CRM-M-40987-2019 (O & M)
Reserved on: 07.07.2026
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M. Manikya Reddy

..... Petitioner

V/s

M/s Skylark Hatcheries Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Shobit Phutela, Advocate and
Mr. Shourya Mehra, Advocate,
for the petitioner.

Mr. Sanjiv Kumar, Advocate,
for the respondent.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition is for quashing of the complaint bearing No.NACT No.358 of 2018 dated 02.07.2018 (Annexure P-2), the summoning order dated 04.07.2018 (Annexure P-3) passed by the Sub Divisional Judicial Magistrate, Tehsil Safidon, District Jind, Haryana and all consequential proceedings arising therefrom.

2. The brief facts of the case as emanating from the pleadings are that one Masani Reddy Poultry Farm, allegedly managed by the petitioner



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was supplied Layer chicks by the complainant-respondent on credit basis from time to time. On 28.02.2018, a sum of Rs.6,90,952/- was outstanding against Masani Reddy Poultry Farm.

3. In the discharge of the above liability, a cheque bearing No.285832 dated 22.03.2018 for an amount of Rs.6,00,000/- drawn on Canara Bank Gadwal, purportedly signed by the petitioner from an account maintained by him was issued to the firm of the complainant. The said cheque came to be dishonoured for the reasons 'Fund Insufficient', leading to the filing of the complaint under Section 138 of the Negotiable Instruments Act (Annexure P-2) and the consequential summoning order dated 04.07.2018 (Annexure P-3).

4. The learned counsel for the petitioner contends that the petitioner has no dealings with the respondent. The cheque in question has not been signed by the petitioner or issued from an account maintained by him. The account number mentioned in the cheque is different from the account maintained by the petitioner. In fact, the cheque has been issued from an account maintained by the son of the petitioner who has not been made an accused. Therefore, no liability under Section 138 of the Negotiable Instruments Act can be affixed upon the petitioner, though, the complainant may file an FIR/a complaint or initiate recovery proceedings. Reliance is placed on the judgments in '*Alka Khandu Avhad versus Amar Syamprasad Mishra and Ors. 2021(2) RCR (Criminal) 286, Jugesh Sehgal*



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versus Shamsher Singh Gogi 2009(3) RCR(Criminal) 712 and N. Vasantha versus R. Srinivasan (Crl. O.P. No.10031 of 2011 and M.P. No.1 of 2011 decided on 17.03.2017)'.

5. The learned counsel for the respondent, on the other hand, contends that the petitioner who is incharge of Masani Reddy Poultry Farm owed a sum of Rs.6,90,952/- for the Layer chicks supplied by the respondent firm. When the said amount was not paid it was the petitioner himself who issued the cheque for an amount of Rs.6,00,000/-. The respondent could not have known that the cheque has not been signed by the petitioner or issued from an account not maintained by him. It would be a disputed question of fact as to who had signed the cheque and from whose account the said cheque was issued. In fact, if the arguments of the petitioner were to be accepted that the petitioner had not signed the cheque and the cheque in question pertained to an account different from the one in the name of the petitioner, then, it would be a case of cheating and forgery as well. He further contends that the petitioner has multiple cases registered against him under Section 138 of the Negotiable Instruments Act and in some of which he has been declared a proclaimed offender. Therefore, the present petition is liable to be dismissed.

6. I have heard the learned counsel for the parties.



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7. The Hon'ble Supreme Court in *Alka Khandu Avhad versus Amar Syamprasad Mishra and Ors. 2021(2) RCR (Criminal) 286*, held as under:-

7. *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:*

- 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.*

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.

8. In *Jugesh Sehgal versus Shamsher Singh Gogi 2009(3) RCR(Criminal) 712*, the Hon'ble Supreme Court has held as under:-



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6. *Learned counsel appearing for the appellant submitted that the High Court gravely erred in declining to exercise its jurisdiction under section 482 of the Code in a case where the complaint ex facie lacked the basic ingredients of the offence under Section 138 of the Act for which the appellant has been made to stand trial. It was contended that admittedly, the cheque in question, purportedly issued by the appellant, was from an account not maintained by him with the Indian Bank but by one Ms. Shilpa Chaudhary and therefore, the basic ingredient of Section 138 of the Act was missing. It was also urged that since the said bank account had already been closed on 3rd November, 2000, there was no question of the subject cheque being issued in favour of the complainant by the appellant on 20th November, 2000. It was pleaded that the filing of the complaint under the said provision is an abuse of the process of the Court and therefore, the High Court ought to have quashed the complaint.*

7. *Per contra, learned counsel appearing on behalf of the complainant, supported the impugned order and submitted that having issued the cheque to the complainant under his signatures by making a false representation that the account was maintained by him, the appellant had duped the complainant. It was contended that at this juncture the question whether or not the cheque was issued by the appellant is premature as the same would be determined only after the evidence has been led by the parties. Learned counsel thus, argued that the appellant having played a fraud on the complainant, does not deserve any relief.* 8. *It is true that Section 138 of the Act was enacted to punish unscrupulous drawers of cheques who, though purport to discharge their liability by issuing cheque, have no intention of really doing so, yet to fasten a criminal liability under the said provision, necessary ingredients of the*



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Section are to be satisfied. Section 138 of the Act reads as follows :

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.

8. It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled :

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;



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(ii) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that 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;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank;

(v) the payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice;

9. Being cumulative, it is only when all the afore-mentioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act.

10. In the case before us, it is clear from the facts, briefly noted above, and in para 3 of the complaint as extracted, that on receipt of the return memo from the bank, the complainant is stated to have realised that the dishonoured cheque was issued from an account which was not maintained by accused No. 1 - the appellant herein, but by one Shilpa Chaudhary. As a matter of fact and perhaps having gained the said knowledge, on 20th January, 2001, the complainant filed an FIR against all the accused for offences under sections 420, 467, 468, 471, 406 of the Indian Penal Code (Indian Penal Code). Thus, there is



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hardly any dispute that the cheque, subject matter of the complaint under Section 138 of the Act, had not been drawn by the appellant on an account maintained by him in the Indian Bank, Sonepat branch. That being so, there is little doubt that the very first ingredient of Section 138 of the Act, enumerated above, is not satisfied and consequently the case against the appellant for having committed an offence under Section 138 of the Act cannot be proved.

9. In ***N. Vasantha versus R. Srinivasan (Crl. O.P. No.10031 of 2011 and M.P. No.1 of 2011 decided on 17.03.2017)***, the Madras High Court held as under:-

5.The learned counsel for the petitioner would submit that the petitioner cannot be roped in the above case merely because she is the mother of the 2nd accused. Furthermore the petitioner is not the drawer of the cheque and the cheque involved in the case was not drawn on an account maintained by the petitioner. Further the petitioner is not a party to the above transaction of dishonor of the cheque and the same can be ascertained from the pleadings of the complaint filed by the respondent stating that the 2nd accused alone is the drawer of the cheque and the subject cheque was drawn on an account maintained by the 2nd accused. Therefore the above Criminal Complaint lodged by the respondent is an abuse of process of Law and the same is liable to be quashed.

6.The learned counsel for the petitioner relies on the following judgments of the Honble Apex Court to substantiate his claim that the proceeding under Section 138 of the Negotiable



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Instruments Act is maintainable only as against the drawer of the cheque and not against anybody else.

1. 2010-2-LW (Cri) 1279 (SC) in a case between P.J. Agro Tech Limited & Ors. v. Water Base Limited
2. (2009) 14 SCC 683 in a case between Jugesh Sehugal v. Shamsheer Singh Gogi
3. 1998 SCC (Cri.) 1400 in a case between Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and ors.
4. 2011-1 L.W.(Cri.) 330 in case between Kannukiniyal v. Sri Santhosimatha

7. Per contra, the learned counsel for the respondent would submit that both the accused have borrowed the hand loan of Rs.9,08,000/-, but have failed to repay the same in time. Thereafter the accused issued check bearing No.575885 dated 20.07.2009 drawn on ICICI Bank Ltd., Vellacherry Branch, Chennai. But when the same was presented for collection on 21.08.2009 it was returned dishonored for want of sufficient funds. Only thereafter the above Criminal Complaint came to be lodged against the petitioner/1st accused and her son, the 2nd accused, since they failed to repay the loan in furtherance of the demand notice issued by the respondent stating the dishonor of cheque issued by the accused.

8. On careful perusal of the records it is noticed by this Court that the petitioner herein is neither drawer of the cheque, nor was drawn on an account maintained by the petitioner, whereas it stands drawn on the account of the 2nd accused. Further it is noteworthy that it is not the case of the respondent that the petitioner and the 2nd accused constitute association of persons and that the said association is the drawer of the cheque.



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9. In the above circumstance, for appreciation of the question as to whether a criminal complaint under Section 138 of Negotiable Instruments Act would lie as against any person other than the drawer, it would be relevant to look into Section 138 of Negotiable Instruments Act, which is extracted hereunder:

Section 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 year, 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



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(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.

10. From the above, it is clear that only a drawer of the cheque can be prosecuted and punished for an offence under Section 138 of N.I. Act. It is needless to say for this Court that unlike civil liability, the Criminal Liability has to be gathered from the specific statutes and it should fall within the purview of the Section charged with. Therefore this Court is of the opinion that the criminal liability cannot be fastened against the petitioner and the continuance of such criminal prosecution will be an abuse of process of Court and Law.

10. A perusal of the aforementioned judgments would reveal that for liability under Section 138 of the Negotiable Instruments Act, the signatory of the cheque must issue the same from an account maintained by him.

11. Coming back to the facts of the present case, it is apparent that the cheque was issued by the petitioner to the complainant firm in discharge of the legal debt incurred by Masani Reddy Poultry Farm. However, it has not been disclosed to the petitioner that the cheque had been signed by the son of the petitioner and drawn from an account maintained by him. Quite obviously, the petitioner would be unaware of the signatory of the cheque as also the number of the account from which the cheque has been issued.



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Further, the petitioner has deliberately not responded to the legal notice sent by the respondent-complainant to claim that the cheque has not been signed by him and nor issued from an account maintained by him. Be that as it may, in view of the judgments in *Alka Khandu Avhad (supra)*, *Jugesh Sehgal (supra)* and *N. Vasantha (supra)*, the petitioner cannot be summoned to face Trial under Section 138 of the Negotiable Instruments Act.

12. In view of the above discussion, I find considerable merit in the present petition. Therefore, the same is allowed and the complaint dated 02.07.2018 (Annexure P-2), summoning order dated 04.07.2018 (Annexure P-3) and all consequential proceedings arising therefrom stand quashed.

13. However, keeping in view the peculiar facts and circumstances of the case, in case, the complainant-respondent wishes to initiate criminal proceedings and/or criminal prosecution for cheating/forgery etc. against the petitioner and others either by filing an FIR or by virtue of a private complaint within a period of 60 days from the date of receipt of a copy of this order, the delay in initiating such proceedings will not be called into question by the concerned Court/police authorities.

14. The pending application(s), if any, shall stand disposed of accordingly.

July 08, 2026
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No