IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 6821 of 2024

With
R/CRIMINAL MISC.APPLICATION NO. 6807 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MRS. JUSTICE M. K. THAKKER

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Approved for Reporting	Yes	No
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SHILPA HITESH CHHAGANBHAI MISTRI
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR DARSHAN K KOTHARI(14004) for the Applicant(s) No. 1
MR RAXIT J DHOLAKIA(3709) for the Respondent(s) No. 2
MS.MONALI BHATT, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MRS. JUSTICE M. K. THAKKER**

Date : 14/08/2026

JUDGMENT

1. Rule returnable forthwith. Learned APP waives service of rule on behalf of respondent-State and learned advocate Mr.Raxit Dholakia waives service of rule on behalf of respondent no.2.

2. This application is filed for quashment of the complaint filed under section 138 of the N.I.Act on the ground that the applicant who has been shown as accused no.2 is the joint account holder and except making avermnets in the

complaint that applicant is wife of accused no.1, no other allegations are made in the complaint and therefore, it is prayed that the impugned complaint is abuse of process of law.

3. Heard learned advocate Mr.Darshan Kothari for the applicant and learned advocate Mr.Raxit Dholaki for the respondent no.2.

3.1. Learned advocate Mr.Darshan Kothari submits that the impugned complaint is false, frivolous and malicious and the same is not legally sustainable. It is submitted that from the perusal of the complaint and the mandatory notice issued by the respondent No.2-complainant, no allegations have been levied against the present applicant and only because applicant is joint account holder in the cheque, the applicant is arraigned as co-accused in the matter without the applicant being involved in any manner with the respondent No.2 in the entire transaction. It is further submitted that the signature on cheque belongs to husband of the applicant being accused No.1 in the impugned Criminal Case and the applicant is implicated merely to harass her and in order to extort money. Learned advocate Mr.Raxit

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Dholaki for the respondent no-2 has vehemently opposed this application and prayed that the present be rejected.

4. On referring the allegations made in the complaint, more particularly, para 2 it emerges that only allegation made against the present applicant who is accused no.1 in complaint is that she is the wife of accused no.1. This Court has also referred the cheque which dishonoured and was subject matter of filing the complaint under section 138 of the N.I.Act. It emerges that the applicant is a joint account holder with her husband and the husband is signatory of the cheque. At this stage, reference of the decision rendered by the Apex Court in the case of ***Aparna A. Shah Vs Sheth Developers Pvt Ltd and Anr. reported in (2013) 8 SCC 71*** is required to be made. The relevant paragraphs are reproduced hereinbelow:

> *23. The learned Single Judge of the Madras High Court in Devendra Pundir vs. Rajendra Prasad Maurya, Proprietor, Satyamev Exports S/o. Sri Rama Shankar Maurya, 2008 Criminal Law Journal 777, following decisions of this Court, has concluded thus:*
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> *"7. This Court is of the considered view that the above proposition of law laid down by the Hon'ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case. Even in this case, as already pointed out, the first accused is admittedly the*

sole proprietrix of the concern namely, "Kamakshi Enterprises" and as such, the question of the second accused to be vicariously held liable for the offence said to have been committed by the first accused under Section 138 of the Negotiable Instruments Act not at all arise." After saying so, learned Single Judge, quashed the proceedings initiated against the petitioner therein and permitted the Judicial Magistrate to proceed and expedite the trial in respect of others.

24. In Gita Berry vs. Genesis Educational Foundation, 151 (2008) DLT 155, the petitioner therein was wife and she filed a petition under Section 482 of the Code seeking quashing of the complaint filed under Section 138 of the N.I. Act. The case of the petitioner therein was that the offence under Section 138 of the Act cannot be said to have been made out against her only on the ground that she was a joint account holder along with her husband. It was pointed out that she has neither drawn nor issued the cheque in question and, therefore, according to her, the complaint against her was not maintainable. Learned Single Judge of the High Court of Delhi, after noting that the complaint was only under Section 138 of the Act and not under Section 420 IPC and pointing out that nothing was elicited from the complainant to the effect that the petitioner was responsible for the cheque in question, quashed the proceedings insofar as the petitioner therein.

25. In Bandeep Kaur v. Avneet Singh12, in a similar situation, the learned Single Judge of the Punjab and Haryana High Court held that in case the drawer of a cheque fails to make the payment on receipt of a notice, then the a provisions of Section 138 of the Act could be attracted against him only. The learned Single Judge further held that though the cheque was drawn to a joint bank account which is to be operated by anyone i.e. the petitioner or by her husband, but the *controversial document is the cheque, the liability regarding dishonouring of which can be fastened on the drawer of it. After saying so, learned Single Judge accepted the plea of the petitioner and quashed the b proceedings insofar as it relates to her and permitted the complainant to proceed further insofar as against others.*

26. In the light of the principles as discussed in the earlier paragraphs, we fully endorse the view expressed by the learned Judges of the Madras 10, Delhi and Punjab and Haryana12 High Courts.

27. In the light of the above discussion, we hold that under Section 138 c of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains the name of the appellant and her husband, the fact remains that her husband alone had put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in-chief d of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque.

28.We also hold that under Section 138 of the 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 filed under Section 138 cannot be used as arm-twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. The culpability attached to the dishonour of a *cheque can, in no case "except in case of Section 141 of the NI Act" be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Act. Even the High Court has specifically recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after 9 issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to him. Accordingly, the High Court was clearly wrong in holding that the prayer of the appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage.*

5. Considering the ratio laid on by the Apex Court in the above case, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is joint account holder. The prosecution under section 138 of the N.I.Act can be initiated only against drawer of the cheque and he can be made as accused in any proceedings under section 138 of the N.I.Act. As the applicant is not the signatory of the cheque and was joined only on the basis of being the joint account holder as well as that she is the wife of accused no.1, the proceedings initiated against the

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present applicant would be abuse of process of law.

6. Considering the above observations, this Court is of the view that the present application requires to be allowed.

7. Resultantly, this application is allowed. Rule is made absolute.

(M. K. THAKKER,J)

ARCHANA S. PILLAI