

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 19th OF JUNE, 2023

MISC. CRIMINAL CASE No. 60202 of 2021

BETWEEN:-

**SMT. AFSA KHAN W/O GULAM DASTGEER DEHELVI,
AGED ABOUT 39 YEARS, OCCUPATION: BUSINESS R/O 62-
C, ADARSH MECHANIC NAGAR, BADI BHAMORI, NEAR
SAYAJI CLUB, INDORE (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI RAGHVENDRA SINGH RAGHUVANSHI - ADVOCATE)

AND

**MOHD. TAREEK S/O MOHD. YUSUF R/O 143, JAWAHAR
MARG, INDORE (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI ARVIND KUMAR SHARMA – ADVOCATE)

This application coming on for hearing this day, the court passed the following:

ORDER

With the consent of learned counsels for both the parties, the matter has been heard finally.

2. This petition filed under Section 482 of the Code Of Criminal

Procedure, 1973, by the petitioner/accused No.1 challenging the impugned summons (Annexure - P1) issued by Court of Judicial Magistrate First Class, Indore in case No.UNCR 3589/ 2020, impugned criminal complaint dated 11/09/2020 (Annexure - P2) filed against her and her husband/accused No.2 by the respondent/complainant under Section (*hereinafter as u/S*) 138 of the Negotiable Instruments Act, 1881 (*hereinafter as NI Act*) and all the consequent entire criminal proceedings therein.

3. Facts of the case in short are that accused persons are wife and husband amongst and both the parties are known to each other. Accused persons were in need of loan, thus on their request the complainant had given Rs.5,00,000/- in Bank A/c of petitioner/accused No.1 on 26/06/2020 through RTGS. The complainant had also given Rs.2,00,000/- to accused No.2 in presence of accused No.1. The accused No.2 had issued a cheque of Rs.7,00,000/- on 17/06/2020 to repay the loan amount in favour of the complainant, but the aforesaid cheque was dishonoured on 20/06/2020. The complainant had given notice to the accused persons despite of that they had not repaid the loan amount. Therefore, he filed a complaint against the accused persons.

4. Learned counsel for the petitioner/accused No.1 has submitted that she had not signed and issued any cheque in favour of the complainant/respondent. The questioned cheque was issued only by her husband/accused No.2. Therefore, complaint u/S 138 of the NI Act, against the petitioner is nothing but abuse of process of law. Therefore, she has prayed for quashing of private complaint registered against her.

Learned counsel has placed reliance on the case of *Mrs. Aparna A. Shah V M/S Seth Developers Pvt. Ltd. And Ors.* [Reported in AIR 2013 SC 1230] and *Smt. Archana Kanthed V M/S Shree Vinayak Sales Through Smt. Rakhi Kocheta* [Order Dated 20/02/2019 passed in MCRC no. 8520/ 2017].

5. Learned counsel for the respondent supported the impugned order and prays for rejection of the petition.

6. I have heard learned counsel for the parties and perused the record.

7. For deciding the matter it is apposite to reproduce Section 138 of NI Act, which runs 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 provision of this Act, be punished with

imprisonment for 4 [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, 5 [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 of other liability” means a legally enforceable debt or other liability.”

8. In the case of ***Mrs. Aparna A. Shah (Supra)*** the Apex Court in Paragraph 22 has held as under:-

(22) In the light of the above discussion, we hold that under Section 138 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 name of the appellant and her husband, the fact remains that her husband alone put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in- chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque.”

9. In the case of **Smt. Archana Kanthed (Supra)**, coordinate bench of this Court relying upon the judgment of **Mrs. Aparna A. Shah (Supra)** has held that having regard to the aforesaid, no ground to prosecute the petitioner exists, therefore, prosecution initiated against her deserves to be quashed.

10. From the perusal of the instant case, it appears that the questioned cheque was not issued by the petitioner/accused No.1 and also not signed by her. The aforesaid cheque is issued only by the accused No.2 and also signed by him. Therefore, the petitioner cannot be prosecuted u/S 138 of the NI act. Though it appears that the complainant/respondent had given Rs.5,00,000/- to the petitioner in her bank account through RTGS on 26/06/2019 but, she has not issued any

cheque of the aforesaid amount in favour of the complainant. Therefore, on the basis of aforesaid ground, she cannot be prosecuted u/S 138 of the NI Act. Therefore, prosecution initiated against the petitioner/accused No.1 is liable to be quashed.

11. Consequently, the petition is allowed. Proceeding pending before the Court of JMFC, Indore in case No.UNCR 3589/2020, u/S 138 of the NI Act against the petition, is hereby quashed.

With the aforesaid, the petition stands **allowed** and disposed off.

(PRAKASH CHANDRA GUPTA)
JUDGE

Shruti

