

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE PRANAY VERMA**

**ON THE 6<sup>th</sup> OF FEBRUARY, 2024**

**MISC. CRIMINAL CASE No. 34977 of 2022**

**BETWEEN:-**

**K.V. VIJAYVARGIYA S/O SHRI RAMCHANDRA,  
AGED ABOUT 65 YEARS, OCCUPATION:  
RETIRED 511, CLERK COLONY, INDORE  
(MADHYA PRADESH)**

**.....APPLICANT**

**(BY SHRI MANISH KUMAR VIJAYWARGIYA - ADVOCATE)**

**AND**

**SANJAY NAGPAL S/O SHRI MANOHAR  
NAGPAL, AGED ABOUT 50 YEARS,  
OCCUPATION: BUSINESS 77, PALSIKAR  
COLONY (MADHYA PRADESH)**

**.....RESPONDENT**

**(BY SHRI ASHUTOSH NIMGAONKAR - ADVOCATE)**

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

**ORDER**

1. With the consent of learned counsel for the parties the matter is finally heard.

2. This petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') has been preferred by the petitioner K. V. Vijaywargiya, who is accused No.2 before the trial Court for quashment of Criminal Case No.4390/2018 pending before the Judicial Magistrate, First Class, District Indore against him.

3. The respondent/complainant has filed a complaint under Section 200 of the Code before the trial Court for prosecuting and punishing the accused/petitioner and one Mr. Ajay Sharma for offence punishable under Section 138 of the Negotiable Instrument Act, 1881 (for short "the Act, 1881").

4. As per the complainant, both the accused had availed a loan of Rs.10,00,000/- from him and had executed a *hundi chitthi* on 08.07.2017 in his favour towards repayment. In discharge of aforesaid liability, accused No.1 namely Mr. Ajay Sharma had tendered a post dated cheque bearing No.078389 dated 08.05.2018 in the sum of Rs.10,00,000/- drawn on Union Bank of India, Scheme No.54 Branch, Indore in his favour. The accused had assured that the cheque will be honoured on its due date. The complainant presented the cheque in his bank for encashment but the same was dishonored due to insufficiency of funds in the Bank account of the drawer. The complainant upon receiving the return memo from his banker issued notice on 18.05.2018 to the accused demanding payment of the amount of cheque. The notices were refused by the accused nor was the amount of the cheque paid to him. In such circumstances he has instituted the present proceedings against the accused before the trial Court.

5. Learned counsel for the petitioner has submitted that the cheque in question had been signed by accused No.1 Amit Sharma only and not by the petitioner. In the complaint itself the complainant has stated so. There is no averment that the petitioner has issued any cheque in favour of the complainant. Though the petitioner may be alleged to be a person who has not repaid the debt to the complainant but for fastening liability under Section 138 of the Act, 1881 it was mandatory for him to have signed the cheque issued in favour of the complainant. The same has admittedly not been done in view of which the proceedings against the petitioner deserve to be quashed.

6. Per contra, learned counsel for the complainant has submitted that the petitioner had also borrowed amount from the complainant and had executed a hundi chitthi in his favour as regards repayment of the amount but no such repayment has been made. The cheque was issued by accused No.1 towards discharge of liability of both the accused hence the petitioner is also liable for prosecution under Section 138 of the Act, 1881 in the same manner as accused No.1. There is sufficient ground for proceeding with against the petitioner in view of which the petition deserves to be dismissed.

7. I have considered the submissions of the learned counsel for the parties and have perused the record.

8. For appreciation of the dispute between the parties it would be apposite to reproduce Section 138 of the Act, 1881 which is 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 [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.”

9. Under the aforesaid provision it is only the person who has drawn the cheque for payment of any amount of money to another person which is returned by the Bank unpaid due to reasons as stated thereunder that such person shall be deemed to have committed an

offence. Further it has been provided that upon dishonor of the cheque demand has to be made to the drawer of the cheque and such drawer has to fail to make the payment of the amount of money of the cheque. Thus, it is abundantly clear that liability under Section 138 of the Act, 1881 can be fastened only upon the drawer of the cheque i.e. the person who has signed upon the cheque. Even if the said cheque has been signed by one person for discharging the liability of two or more persons including him, then also in case of dishonor of the cheque it is only that person who shall be liable under Section 138 of the Act, 1881 and not those persons for discharge of whose liability also the cheque had been issued. Those persons may be liable otherwise but not for the cheque which has been issued by the drawer and subsequently dishonored. On allegation that the dishonored cheque was issued by a person for discharging the liability of himself and other persons also, those persons cannot be prosecuted for offence under Section 138 of the Act, 1881.

10. In the present case also the cheque was signed by accused No.1. The same was not signed by the petitioner. Even though it is contended by the complainant that the cheque was issued by accused No.1 in discharge of debt owed by him as well as by the petitioner, but for dishonor of the said cheque the petitioner cannot be said to have committed an offence and held liable under Section 138 of the Act, 1881 since he is not a signatory to it.

11. Thus in view of the aforesaid discussion, the continuation of the proceedings against the petitioner under Section 138 of the Act, 1881

would be gross abuse of the process of law and for securing the ends of justice they deserve to be quashed. Consequently, the petition deserves to be and is accordingly allowed. The proceedings of Criminal Complaint Case No.4390/2018 pending before Judicial Magistrate, First Class, District Indore against the petitioner for offence punishable under Section 138 of the Act, 1881 are hereby quashed. It is clarified that the same shall continue against the co-accused.

12. The petition is accordingly allowed and disposed off.

**(PRANAY VERMA)**  
**JUDGE**

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