

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

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 25<sup>th</sup> OF JULY, 2024**

**MISC. CRIMINAL CASE No. 29338 of 2023**

***GHANSHYAM***

*Versus*

***VIMAL KOTHARI***

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**Appearance:**

*Shri Prakash Chandra Shrivastava – Advocate for petitioner.*

*None for the respondent, despite service of notice.*

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**ORDER**

- 1] None for the respondent, despite service of notice.
- 2] This petition under Section 482 of Cr.P.C. has been filed by the petitioner/accused against the order dated 25.03.2023, passed by Judicial Magistrate First Class, District Ratlam whereby the application for discharge, filed by the petitioner/accused in a case arising out of Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act of 1881') has been rejected.
- 3] Order sheet also reveals that on 26.04.2024, this Court had observed that nobody has appeared despite service of notice, and since the contention of the petitioner was that the affidavit as provided under Section 145 of the Act of 1881 has not been filed. Hence, the original

record of the case was also requisitioned. Today again nobody has appeared on behalf of the respondent. However, the record has been requisitioned from the trial court.

4] Counsel for the petitioner has submitted that not only the complaint is not signed by the complainant, it is also not supported by an affidavit under Section 145 of the Act of 1881 and Vakalatnama has also not been filed by the Advocate representing the complainant.

5] Heard and perused the record.

6] On perusal of the record, this Court finds rather disturbing aspect of the matter. It is found that the complaint under Section 138 of the Act of 1881 which was filed on 20.07.2022 has not been signed by the complainant himself, but it was simply presented by the counsel Shri Nissar Khan on behalf of the complainant, whose Vakalatnama is also not on record. It is also found that the affidavit in support of the complaint is also blank as it is neither signed nor notarized; still the cognizance has been taken by the learned Judge of the trial Court on 20.07.2022. In the order of cognizance, it is found that the learned JMFC has also taken note of the affidavit of the complainant under Section 145 of the Act of 1881, even though on the said date, no such affidavit under Section 145 of the Act of 1881 was filed.

7] It is also found that on 21.07.2023 an application has also been filed by the counsel for the respondent/complainant that the complaint has been erroneously filed without signature of the complainant and the complainant is also ready to sign the complaint but till date, there is no order passed by the JMFC on the said application, and as on date, no efforts have been made by the complainant to try to rectify the same and there is no valid signed complaint along with the affidavit of the

respondent/complainant. Thus, in the considered opinion of this court, even the case should not have been registered

8] It is also found that an affidavit has also been filed subsequently under Section 145 of the Act of 1881 on 20.09.2023, but in the considered opinion of this court, in the absence of a proper complainant, an affidavit u/s.145 is of no avail.

9] In such circumstances, this Court is of the considered opinion that in the absence of the signed complaint and the affidavit in support thereof, filed by an advocate who was not even authorized to file the same as his Vakalatnama is also not filed on record, the cognizance could not have been taken u/s142 of the Act of 1881. Thus, the cognizance taken by the learned Judge of the trial Court **20.07.2022** is hereby **set aside** and **consequently the complaint filed under Section 138 of the Act of 1881** stands quashed for the reasons as aforesaid.

10] Let an explanation be also called from the concerned Judge as to how the aforesaid case has been even registered, and the cognizance has been taken. Original record of the case be remitted back to the concerned Court.

11] Accordingly, the petition stands *allowed* and *disposed of*.

**(SUBODH ABHYANKAR)**  
**JUDGE**

Pankaj