**IN THE COURT OF TEJINDER PREET KAUR, PCS,
JUDICIAL MAGISTRATE 1ST CLASS, MALERKOTLA
UID NO. PB0408**

CIS No.	**NACT-159-2022**
Date of Institution	**11.03.2022**
Date of decision	**23.10.2025**
CNR No.	**PBSGC-1000500-2022**

Bhupinder Singh son of Lal Singh resident of village Narike Tehsil and District Malerkotla.

…...Complainant.

Versus

Rajesh Kumar son of Parshoutam Dass resident of Bhatia Street, Railway road, opposite Jindal Hospital, Malerkotla.

…..Accused.

Complaint under section 138 of Negotiable Instrument Act, 1881.

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Present: Complainant with counsel Sh. Kuljit Singh Waraich Advocate.
Accused Rajesh Kumar on bail represented by counsel Sh. Devan Verma Advocate.

JUDGMENT.

1. The present complaint has been filed by the complainant against the accused on the allegations that the accused has borrowed a sum of Rs. 5,00,000/- from the complainant and in order to discharge the legal liability towards him, the accused issued a cheque No. 570502 dated 20.01.2022 for an amount of Rs. 5,00,000/- drawn on Yes Bank, Branch Malerkotla from his firm Account No. 093963300000163 in favour of the complainant. It is further submitted that it was assured by the

accused that whenever the cheque will be presented, the amount shall be paid by his bankers on presentation. After receipt of the said cheque and as per assurance given by the accused to the complainant, the complainant presented the said cheque with his banker i.e. State Bank of India, Branch Malerkotla for encashment, but the same was returned by his bankers with remarks "Account Blocked" vide memo dated 05.02.2022. It is further submitted that thereafter, the complainant requested the accused number of times to make the payment of the cheque in question but accused did not pay the said amount of cheque to the complainant. Thereafter, the complainant served upon accused a legal notice dated 14.02.2022 which was sent through registered post, demanding from the accused to make the payment of cheque within fifteen days from the receipt of legal notice, but the accused failed to make any payment to the complainant despite the notice of demand. It is further averred that in this way, the accused has committed a fraud with the complainant and the accused has issued the above-mentioned cheque to the complainant with an ulterior motive to cause unnecessary harassment, mental agony, lot of damage and financial loss to the complainant and has committed an offence punishable under section 138 of Negotiable Instruments Act, 1881. The present complaint has been filed well within the prescribed limits of the Negotiable Instruments Act, 1881. Hence, the present complaint.

2. After going through the preliminary evidence led by the complainant, the accused was ordered to be summoned to face trial under section 138

of Negotiable Instrument Act vide order dated 11.03.2022 passed by Ms. Manpreet Kaur, the then Ld. Sub-Divisional Judicial Magistrate, Malerkotla.

3. It is pertinent to mention here that accused was declared proclaimed person on 20.07.2023 by the court of Ms. Roopa Dhaliwal, the then Ld. Sub-Divisional Judicial Magistrate, Malerkotla and file was consigned to the record room.

4. Thereafter, accused surrendered before the Court on 05.12.2023 and he was admitted on bail. Thereafter notice of accusation was served upon the accused for commission of offence under section 138 of Negotiable Instrument Act, to which he did not plead guilty and claimed trial.

5. To discharge his onus, complainant Bhupinder Singh himself stepped into the witness box as CW-1 and deposed through his affidavit Ex.CW1/A who deposed on the lines of version of the complaint. He proved on record original cheque as Ex.C1, original memo as Ex.C2, copy of legal notice dated 14.02.2022 as Ex.C3 and original postal receipt as Ex.C4, copy of account statements of complainant as Ex.C5.

6. Thereafter, complainant closed his evidence and the case was fixed for defence evidence.

7. On completion of complainant's evidence, statement of accused under section 313 Cr.P.C. was recorded, wherein, he denied every incriminating circumstance and claimed innocence on the ground that he is falsely implicated in the present case. He deposed that he did not commit any offence. He deposed that he do not know the complainant

personally. He deposed that he never borrowed any alleged money from the complainant against the alleged cheque in question. He deposed that complainant misused the cheque. He deposed that the cheque was not filled by him and the complaint is not maintainable in the present form as complaint is not filed against the proper juries person. He deposed that he has no legal liability towards the complainant. He deposed that he personally never borrowed the money from the complainant.

8. In defence evidence, accused got examined Sh. Sukhjinder Singh, Handwriting & Fingerprint Expert as DW-1 and he tendered his report and photographic charts as Ex.DW1/1 and Ex.DW1/3.

9. Thereafter, no other evidence led by the accused and same was closed by order.

10. The counsel for the complainant has contended during the course of arguments that the accused had issued the cheque in question in discharge of his legal liability but on presentment, said cheque was returned back dishonoured for the reason "Account blocked" vide memo dated 05.02.2022. Thereafter, a legal notice demanding the payment of the cheque was sent at the correct address of the accused but despite of that, the accused failed to make the outstanding payment. On the strength of these facts, it has been argued by the Ld. counsel for the complainant that the provisions of section 138 of the Act are duly attracted in this case and the accused is liable to be punished as per law.

11. On the other side, in the case in hand, learned counsel for the accused alleged that complainant has failed to prove the legally enforceable

liability and deserves acquittal. He alleged that neither accused borrowed amount of Rs. 5 lac nor issued any cheque in favour of the complainant in discharge of any legal and enforceable liability and the same has been misused by the complainant. He further argued that the cheque was not filled by the accused and the complaint is not maintainable in the present form as complaint is not filed against the proper juris person. He has further argued that complainant has no legal liability towards the complainant. Lastly, prayed for acquittal of the accused.

12. I have heard the submissions made by learned counsel for complainant as well as learned defence counsel and have perused the material on record very carefully with their able assistance.

13. The Hon'ble Supreme Court of India has held in **M/s Kusum Ingots & Alloys Ltd. Vs. M/s Pennar Peterson Securities Ltd. 2000(2) RCR(Criminal)-275,** that in order to attract provisions of section 138 of the Act, the following ingredients are to be satisfied:-

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 for the discharge of any debt or other liability.

ii. 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.

iii. 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 cheques or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

iv. 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.

v. 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.

14. Taking up the facts of the case, complainant alleged that the accused issued the cheque in dispute in favour of complainant in discharge of the legal liability amounting to Rs. 5 lacs in his favour. But in order to prove the liability of the accused under section 138 of Negotiable Instruments Act, firstly it was the burden upon the complainant to prove that what was the legally enforceable liability towards the accused and in order to prove the same, complainant has himself stepped into the witness box as CW1 to depose as per the version taken in the complaint, but during his cross examination, **he stated that he known to brother of the accused namely Rakesh Kumar. He stated that he has not mentioned in the complaint as well as his**

affidavit that for what purpose he has given Rs. 5 lac to the accused. He admitted that in the account statement Ex. C5, the entry of M/S Mangla Bricks was reflected, voluntarily said the said firm was operated by accused and his brother but he do not know owner of the said firm. He stated that he has never purchased bricks from M/S Mangla Bricks. He stated that he had not issued any notice to M/S Mangla Bricks. He stated that Rajesh Kumar borrowed money from him nor Mangla Bricks. He stated that Rajesh Kumar operated the M/S Mangla Bricks but he has no record in this regard. He brought on record statement of income tax return Ex. D1 to Ex. D5 and computation sheet in which entry of Rs. 5 lac was not shown. He stated that accused has filled the cheque in question in his presence with same ink. He denied that the cheque in dispute Ex. C1 at point A, Rs. 5 lac was written with different ink.

15. The evidentiary aspect of the offence under section 138 is strongly circumscribed by the statutory presumptions provided under sections 118 and 139 of the Act but it must be borne in mind that presumptions are rules of evidence and do not in any way conflict with the presumption of innocence. Statutory presumptions do not preclude an accused against whom the presumption is drawn from rebutting it and proving the contrary. It has been held in ***Hiten P. Dalal v. Bratindranath Banerjee, 2001(3) RCR (Criminal) 460***, that the rebuttal led by the accused does not have to be conclusively established, but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be

reasonable probable, the standard of reasonability being that of a 'prudent man'.

16. By filing the present complaint, complainant has sought the relief that the accused is liable to make the payment of Rs. 5 lac which he had borrowed from him and in discharge of liability the cheque which has been issued by him was dishonored and is liable to be punished under Section 138 of N.I. Act. In order to prove the liability of the accused, complainant himself stepped into witness box as CW1 and proved on record original cheque as Ex.C1, original memo as Ex.C2, true copy of legal notice dated 14.02.2022 as Ex.C3 and original postal receipt as Ex.C4, account statements of complainant as Ex. C5. On the other hand, accused has got examined Handwriting Expert and proved on record his report and photographic charts as Ex.DW1/1 to Ex.DW1/3. In the case in hand it is the case of the complainant that accused Rajesh Kumar personally borrowed the amount of Rs. 5 lac and issued a cheque in order to discharge the liability, however, it cannot be ignored that the cheque in dispute has been issued from the account of M/S Mangla Bricks and Companies and bears the signatures of Rajesh Kumar as one of the authorized signatory. It is pertinent to mention here that in the present case complainant has not impleaded M/S Mangla bricks and companies as co-accused and it has been contended by the complainant that it is the loan which was for personal use though the cheque was issued for the firm's account. However, going through the entire evidence led on record by the complainant itself depicts that amount of

loan has not been given into the personal account of the accused but in the account of M/S Mangla Bricks and Companies. Further, perusal of the account statement Ex. C5 relied by the complainant also affirms that account on which cheque was drawn is of the M/S Mangla Bricks and Companies and signatures of the accused are as authorized signatory for the M/S Mangla Bricks and Companies. From all these admitted facts, it is evident that the borrower of the cheque within the meaning of Section 138 of N.I. Act is M/S Mangla Bricks and Companies and not Rajesh Kumar in his individual capacity.

It is argued by the Ld. Counsel for the complainant that partnership firm is not made as accused in the present complaint and it is not the ground to acquit the accused in the present case. Ld. Counsel for the complainant in support of his contention has relied upon law laid down in **Anil Hada v. Indian Acrylic Limited, 2001 (1) RCR (Criminal) 1(SC):2000(1)SCC1** in which it was held that prosecution under Section 138 of N.I. Act could be maintained against a person in charge of and responsible for the conduct of the business of a company or firm, even if company itself was not impleaded as an accused. However, this argument advanced by the Ld. Counsel for the complainant is not tenable as in view of the law laid down by Hon'ble Apex Court in **Himanshu Vs. B. Shivamurthy (2019) 3SCC 797**, in which reliance was also placed on **Aneeta Hada v. M/S Godfather Travels and Tours Pvt. Ltd., (2012) 5SCC 661** and was clearly held that for maintaining a prosecution under Section 138 & 141 N.I. Act, arraigning of a company or firm, which is the drawer of the cheque, as an accused is mandatory. The vicarious liability of the person in charge or the authorized signatory arises only when the company or firm itself is prosecuted for the offence. In the absence of such arrangement, complaint filed against the authorized signatory alone is not maintainable. In the present case M/S Mangla Bricks and Companies is the borrower of the cheque which has not been impleaded as accused, therefore, the prosecution against its authorized signatory alone is not legally maintainable as an authorized signatory of the company cannot be treated as drawer in his personal capacity if the cheque is drawn on the companies account. The liability of the person incharge i.e. the director or authorized signatory is vicarious in nature under Section 141 of N.I. Act and its arise only when the firm is also an accused. Thus, the complaint against the person without impleaded the firm is not maintainable and there is nothing on record to show that the liability of the Rajesh Kumar was personal in nature as the entire payment has been made in the account of the firm which has not been made party. Thus, complaint against the accused Rajesh Kumar alone is not maintainable as per law and suffers technical defect and accused is acquitted from charge under Section 138 Negotiable Instrument, Act.

17. In the light of the above discussion and observations, along with the facts and circumstances, this court is of the firm opinion that the complainant cannot be held entitled to the benefits of the statutory presumptions arising under sections 118 and 139 of the Act. As per

settled law, the prosecution must prove the guilt of an accused person beyond all reasonable doubts whereas the standard of proof to prove a defence version is based upon 'preponderance of probabilities'. From the material brought on record and in the light of the attending circumstances, reasonable probability of false implication of the accused cannot be ruled out and therefore no legal liability can be fastened upon the accused. Resultantly, the complaint in hand stands dismissed and the accused present in court is held not guilty and acquitted. His bail bonds and surety bonds stand discharged. File be consigned to record room.

Pronounced.
Dated: 23.10.2025
Kawaljeet Kaur, Steno-II

(Tejinder Preet Kaur), PCS,
Judicial Magistrate 1st Class,
Malerkotla (UID No. PB0408)

This judgment has been directly dictated on computer.