RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Criminal Miscellaneous (Petition) No. 4716/2023
CNR: RJHC010520072023 | URN: CRLMP / 9767U / 2023

Rajasthan High Court
सत्यमेव जयते
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Manglesh Kanwar W/o Shri Dheerajkumar Chouhan, Aged About 39 Years, B/c Rajput R/o 65 Khasra No. 46 Ramnagar Nandari Dist. Jodhpur

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Royal Finance, Through Proprietor Jaydutt Sharma S/o Late Dr. K.d. Sharma B/c Brahman R/o A/12 Saraswati Nagar Jodhpur

----Respondents

For Petitioner(s)	:	Mr. Shreyansh Ramdev
For Respondent(s)	:	Mr. Sriram Choudhary, PP
For Complainant(s)	:	Mr. Vikas Hedau

HON'BLE MR. JUSTICE SUNIL BENIWAL

Order

Reportable

Conclusion of Arguments &
Reserved on : 13/10/2026
Pronounced on : 27/10/2026

1. The present criminal miscellaneous petition has been filed seeking the quashing of the order dated 14.03.2018 passed in Criminal Original Case No. 416/2016 (NCV No. 1385/2017), pending before the learned Special Metropolitan Magistrate (N.I. Act Cases), No. 7, Jodhpur Metropolitan, whereby the substance of the accusation for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, was read over to the petitioner,

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RAJASTHAN HIGH COURT सत्यमेव जयते

and to acquit the petitioner in connection with the said proceedings.

2. The facts of the case, as narrated in the petition, are that the petitioner's husband, Dheeraj Singh Chauhan, borrowed a sum of Rs.1,00,000/- on 13.04.2015 and a further sum of Rs.1,10,000/- on 08.08.2015 from respondent No. 2, carrying interest @2.25% per month. The total borrowed amount was Rs.2,10,000/-, repayment of which was guaranteed by the petitioner. In respect of the said liability, her husband issued a cheque for Rs.2,10,000/-, while the petitioner also issued a cheque for the same amount as security.

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2.1. Both cheques, upon presentation, were dishonoured due to insufficiency of funds. Consequently, respondent No. 2 instituted a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act of 1881') before the learned trial Court. The learned trial Court took cognizance of the offence on 03.08.2016 and, on 14.03.2018, read over the substance of accusation to the petitioner and her husband, who denied the accusation and claimed trial.

2.2. Owing to matrimonial discord, the petitioner began residing at her parental home and, having no knowledge of the hearing dates, failed to appear before the trial Court. Consequently, vide order dated 19.07.2019, she was declared an absconder and a standing warrant was issued against her. The proceedings continued against her husband, who was convicted by judgment dated 02.12.2019 and sentenced to six months' simple

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imprisonment along with a fine of Rs.2,65,000/-, with a further sentence of two months' simple imprisonment in default of payment of fine. The petitioner's husband has served the sentence imposed upon him. Upon receiving information of the standing warrant issued against the petitioner, she surrendered before the learned trial Court and obtained bail.

2.3. Being aggrieved by the order dated 14.03.2018, the petitioner has filed the present petition seeking quashing of the same as well as seeking her acquittal in connection with the proceedings under Section 138 of the Act of 1881.

3. Learned counsel for the petitioner submitted that the loan in question was admittedly obtained by the petitioner's husband for his business, and the petitioner had merely issued a cheque as a guarantor towards repayment of the said loan. For the single liability of Rs.2,10,000/-, two cheques, one issued by the petitioner's husband and the other by the petitioner, were obtained. He contended that the petitioner's cheque, having been issued only as security or guarantee, could not form the basis of prosecution under Section 138 of the Act of 1881. He further submitted that the petitioner's husband had already undergone the sentence imposed upon him and that the complainant's remedy, if any, lay in pursuing appropriate civil proceedings for recovery of the amount.

3.1. Learned counsel further submitted that the complainant had adopted an impermissible procedure by presenting both cheques, issuing a composite legal notice to the petitioner and her husband,

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and initiating common proceedings against them. The complainant ought to have proceeded separately in respect of each cheque by following the statutory procedure prescribed under the Act of 1881. He contended that the presumption under Section 139 of the Act of 1881 could not be invoked against the petitioner in the absence of any legally enforceable debt or liability attributable to her, particularly when the loan had admittedly been obtained by her husband.

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3.2. Learned counsel also placed reliance upon the judgment passed in the case of ***Shantaram Namdeo Sathe v. State of Maharashtra & Anr.; 2019 SCC OnLine Bom 4354***, and contended that a cheque issued merely as security or guarantee could not attract prosecution under Section 138 of the Act of 1881. Reliance was further placed upon ***Dilip Hariramani v. Bank of Baroda; (2024) 15 SCC 443***, to submit that the petitioner could not be subjected to criminal liability merely on account of having stood as a guarantor. He contended that the liability of a guarantor under the Indian Contract Act, 1872, is distinct from criminal liability, and that vicarious criminal liability under Section 141 of the Act of 1881 could not be fastened upon the petitioner solely on the basis of her status as a guarantor.

3.3. Learned counsel further submitted that owing to matrimonial discord, the petitioner had been residing at her parental home and had not been served with notice, resulting in her absence from the proceedings and her subsequent declaration as an absconder. He contended that in view of the aforesaid facts and the legal position

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emerging from the judgments relied upon, the proceedings against the petitioner were not sustainable in law. Accordingly, learned counsel prayed that the petition be allowed and the petitioner be exonerated from the offence under Section 138 of the Act of 1881.

4. Per contra, learned counsel for the respondent no.2 submitted that respondent No. 2 had instituted a joint complaint under Section 138 of the Act of 1881 against the petitioner and her husband, Dheeraj Singh, who was the principal borrower and had also issued a cheque towards repayment of the loan. He contended that the petitioner had stood as a guarantor and had issued a cheque bearing her signature in respect of the liability in question. Upon taking cognizance, the learned trial Court summoned both the accused, explained the substance of accusation to them, and commenced the trial. However, owing to her absence, the petitioner's bail bonds were forfeited and she was subsequently declared an absconder under Section 82 Cr.P.C. The trial proceeded against her husband, who was convicted vide judgment dated 02.12.2019.

4.1. He further submitted that following her subsequent appearance before the trial Court, the petitioner's trial resumed, the complainant was cross-examined on her behalf, and her statement under Section 313 Cr.P.C. was recorded. The final arguments on behalf of the complainant had been concluded, and the matter is pending for completion of arguments on behalf of the accused and pronouncement of judgment.

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4.2. Learned counsel further submitted that the present petition challenges the order dated 14.03.2018 after an unexplained delay of approximately five years. He contended that in proceedings instituted under Section 138 of the Act of 1881, which are governed by the procedure applicable to summons cases, Section 251 Cr.P.C. does not contemplate the framing of a formal charge or a separate hearing on charge. The learned trial Court is required only to state the substance of accusation to the accused and ascertain whether the accused pleads guilty or claims to be tried. Accordingly, the mere explanation of the substance of accusation and commencement of trial did not constitute any illegality warranting interference. In support of this contention, learned counsel relied upon judgments passed by Co-ordinate Benches of this Court in ***Jagmohan v. State of Rajasthan & Anr.; S.B. Criminal Miscellaneous Petition No. 4231/2017*** (decided on 12.05.2025) and ***Kundanveer Singh & Ors. v. State of Rajasthan; S.B. Criminal Miscellaneous Petition No. 2999/2017*** (decided on 07.12.2017).

4.3. Learned counsel also submitted that a joint complaint under Section 138 of the Act of 1881 was maintainable against the principal borrower as well as the guarantor. Reliance was placed upon the judgment passed by a Co-ordinate Bench of this Court in ***Rakesh Jain v. State of Rajasthan & Anr.; S.B. Criminal Miscellaneous Petition No. 167/2017*** (decided on 23.01.2017). Further reliance was placed upon ***ICDS Ltd. v. Beemna Shabeer & Anr.; AIR 2002 SC 3014***, wherein the

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Hon'ble Supreme Court considered the scope of Section 138 of the Act of 1881 and held that the expression "any debt or other liability" is of wide import. He contended that the liability arising from a cheque issued by a guarantor could not be excluded from the ambit of Section 138 of the Act of 1881 merely on the ground that the guarantor's liability was co-extensive with that of the principal debtor under the general law of contract.

4.4. Learned counsel lastly submitted that the petitioner's prayer for acquittal ought to be considered by the learned trial Court upon conclusion of the trial, particularly when the proceedings against her were at an advanced stage. He contended that interference by this Court at the present stage would prematurely terminate the trial and deprive the parties of their statutory remedies against the eventual judgment. Accordingly, learned counsel prayed for dismissal of the petition.

5. Heard learned counsel for the parties and perused the material available on record.

6. The issues arising for consideration in the present petition are, firstly, whether the proceedings under Section 138 of the Act of 1881 against the petitioner warrant interference because the cheque in question was allegedly issued by her as a guarantor for the liability incurred by her husband, and secondly, whether the conviction and sentence already undergone by her husband in respect of the same underlying transaction furnish a ground for quashing the proceedings against the petitioner in exercise of the

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inherent jurisdiction of this Court under Section 482 Cr.P.C. (corresponding to Section 528 BNSS).

7. So far as the challenge to the order dated 14.03.2018 is concerned, it is relevant to note that proceedings under Section 138 of the Act of 1881 are tried in accordance with the procedure applicable to summons cases. Section 251 Cr.P.C. (corresponding to Section 274 BNSS) requires the substance of accusation to be stated to the accused, who is then called upon to plead to the accusation or state whether he or she has a defence to make. In the present case, the substance of accusation was stated to the petitioner on 14.03.2018, whereupon she denied the accusation and claimed trial. No procedural illegality is apparent merely from the fact that the learned trial Court proceeded in accordance with Section 251 Cr.P.C. The challenge to the said order, therefore, cannot be sustained.

8. Learned counsel for the petitioner has contended that the loan was obtained by the husband of the petitioner and she had issued the cheque only as a guarantor. In this regard, the judgment of the Hon'ble Supreme Court in the case of ***ICDS Ltd.*** (supra) is relevant. Therein it was held that a cheque issued by a guarantor is not excluded from the ambit of Section 138 of the Act of 1881 merely because the underlying transaction was undertaken by the principal debtor. The expressions employed in the provision are sufficiently wide to encompass a cheque issued in respect of a legally enforceable debt or other liability, subject to fulfilment of the statutory requirements. Accordingly, the

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petitioner's status as a guarantor does not, by itself, furnish a ground for quashing the proceedings when the cheque is alleged to have been issued by her and bears her signature.

8.1. The decision in the case of ***Dilip Hariramani*** (supra) relied upon by learned counsel for the petitioner, does not advance the petitioner's case to the same extent. The said decision concerned the imposition of vicarious criminal liability upon a person in relation to cheques issued by a firm and the requirements for attracting Section 141 of the Act of 1881. In the present case, the petitioner is alleged to have issued a cheque from her own bank account. The question, therefore, is not merely whether criminal liability can be fastened upon her on account of her status as a guarantor, but whether the cheque personally issued by her satisfies the requirements of Section 138 of the Act of 1881. The said judgment is distinguishable on this basis.

8.2. Learned counsel for the petitioner has also placed reliance upon ***Shantaram Namdeo Sathe*** (supra) to contend that a cheque furnished as security or guarantee cannot attract the provisions of Section 138 of the Act of 1881. However, the mere description of a cheque as a security cheque does not, by itself, determine the applicability of the provision. The relevant consideration is whether the cheque represented a legally enforceable debt or other liability in the circumstances existing at the relevant time. The decision relied upon by the petitioner turned upon the evidence available in that case and cannot be construed as laying down an absolute rule excluding every cheque

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issued by way of security from the operation of Section 138 of the Act of 1881.

9. In the present case, the petitioner's own contention is that her cheque was issued as security for repayment of the amount borrowed by her husband and was to be presented only upon dishonour of his cheque. A perusal of the complaint (Annexure-6) filed by the respondent no.2 reflects that the petitioner's cheque was presented on 15.06.2016 after the husband's cheque had been dishonoured on 14.06.2016. In view of this, the contention that the petitioner's cheque was presented prematurely, contrary to the alleged arrangement, would not be available merely on the ground that both cheques related to the same transaction. Be that as it may, the sequence of presentation does not, by itself, conclude the separate question whether the petitioner's cheque represented a legally enforceable liability. That question must be examined in the light of the terms of the transaction and the evidence available in the proceedings which exercise can be undertaken by the learned trial Court.

10. The further contention that the husband has already undergone the sentence imposed upon him and that continuation of proceedings against the petitioner would result in double recovery also requires distinction between criminal liability arising from dishonour of a cheque and recovery of the underlying debt. The husband's incarceration does not, by itself, establish that the amount due to the complainant has been paid or recovered. At the same time, the complainant cannot recover the same debt more

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than once. Any amount actually recovered towards the underlying liability must, therefore, be duly accounted for in accordance with law. The possibility of double recovery, however, does not, in the absence of further material, extinguish the proceedings arising from a separate cheque allegedly issued by the petitioner.

10.1. It is also pertinent to note that, according to the submissions advanced on behalf of respondent No. 2, the petitioner has appeared before the learned trial Court, the complainant has been cross-examined on her behalf, her statement under Section 313 Cr.P.C. has been recorded, and the matter has reached the stage of final arguments. In these circumstances, the disputed questions concerning the nature of the transaction, the purpose for which the petitioner's cheque was issued and the existence of a legally enforceable liability may appropriately be considered by the learned trial Court on the basis of the evidence on record. The inherent jurisdiction under Section 482 Cr.P.C. (corresponding to Section 528 BNSS) is not ordinarily exercised to undertake an assessment of disputed evidence or to substitute a premature determination of issues that remain for adjudication at trial.

11. The petitioner's status as a guarantor, the fact that the underlying loan was obtained by her husband, and the description of her cheque as security do not, standing alone, establish that the proceedings against her are legally unsustainable. The petitioner's remaining contentions concerning the enforceability and extent of liability would require consideration in accordance

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with law on the basis of the material before the learned trial Court.

12. In view of the discussion made above, this Court does not find sufficient ground to exercise its inherent jurisdiction to quash the proceedings against the petitioner. Accordingly, the present criminal miscellaneous petition is **dismissed**.

13. Needless to observe that the petitioner would be at liberty to raise all grounds available to her in law before the learned trial Court, which shall consider the same on their own merits, uninfluenced by any observations made herein.

14. Pending application(s), if any, stand(s) disposed of.

(SUNIL BENIWAL),J

Sushil Mahecha

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