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**(2008) 12 DEL CK 0168**

**Delhi High Court**

**Case No:** Criminal M.C. No"s. 787 and 788 of 2007

Free India Concepts and Others

APPELLANT

Vs

State and Another

RESPONDENT

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**Date of Decision:** Dec. 19, 2008

**Acts Referred:**

- Negotiable Instruments Act, 1881 (NI) - Section 138, 139, 142

**Citation:** (2010) 1 ALD(Cri) 8 : (2009) 107 DRJ 675 : (2010) 7 RCR(Civil) 2687

**Hon'ble Judges:** Sunil Gaur, J

**Bench:** Single Bench

**Advocate:** Gurbaksh Singh, for the Appellant; R.N. Vats, Additional Public Prosecutor and M.V. Kesavan, Geetha Gangadharan and Rajeev Mittal, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Sunil Gaur, J.

The above titled two petitions i.e. Crl.M.C. No. 787/07 pertains to Crl. Complaint Case No. 1073/1 titled "M.V. Keshawan v. Free India Concepts and Ors." u/s 138 of Negotiable Instruments Act (hereinafter referred to as NI Act) regarding two cheques of Rs. 60,000/- and Rs. 10,000/- respectively and Crl.M.C. No. 788/07 relates to Crl. Complaint Case No. 1072/1 titled "Geetha Gangadharan v. Free India Concepts and Ors." u/s 138 of NI Act regarding dishonoring of two cheques of Rs. 5500/-each.

2. Both the sides states that these two petitions can be heard and disposed together. Petitioners in both these petitions are M/s. Free India Concepts and its Chairman and Managing Director and the Head of Delhi region of the aforesaid company. Their stand in these two petitions is that one Mr. S.K. Ganguli had represented to respondent No. 2 that he was the agent of the M/s. Free India Concepts and had induced respondent No. 2 to join the multi level marketing venture by becoming its agent and after respondent No. 2 became the agent under

the aforesaid venture at the instance of Mr. S.K. Ganguli, who is an accused before the trial court. Respondent No. 2 felt cheated and called upon accused Mr. S.K. Ganguli to refund the amount deposited and accordingly aforesaid S.K. Ganguli issued post dated cheques as referred to above, which were dishonored with the remarks insufficient funds.

3. In the aforesaid two complaints u/s 138 of the N.I. Act, impugned in these two petitions, petitioners herein have been summoned as accused by the trial court vide impugned order dated 22nd December, 2004 4. Learned Counsel for the petitioner"s submits that accused S.K. Ganguli is not an agent of the petitioner No. 1 company and the cheques in question have not been signed by aforesaid S.K. Ganguli on behalf of the petitioner company, nor the said cheques bear any stamp of the petitioner company and thus, there is nothing on record to connect the petitioner with accused S.K. Ganguli, who is facing trial in the two complaints before the trial court.

5. A bare perusal of the cheques in question, reveals that learned Counsel for the petitioners is right in his submissions as these cheques do not bear the stamp of the petitioner company nor it reveals that it has been issued on behalf of the petitioner company.

6. Upon reading of the two criminal complaints in question, it is found that there are no allegations to show that the cheques in question were of the petitioner-company or that they were bearing the stamp of the petitioner company or that accused S.K. Ganguli had signed them in the capacity of the representative/agent of the petitioner-company. Learned Counsel for the respondent has not been able to show, as to how vicarious or constructive criminal liability can be imposed upon the petitioners in view of the aforesaid factual position.

7. As far as the allegations against the petitioners in the impugned complaints are concerned, at best, it can be said that prima facie, they disclose the ingredients of the offence of cheating, but the two criminal complaints in question have not been filed against the present petitioners for the offence of cheating. In this view of the matter, the petitioners cannot be prosecuted for committing the offences u/s 138/139/142 of the Negotiation Instruments Act simplicitor.

8. Resultantly, both these petitions are allowed and the criminal complaints Nos. 1073/1 and 1072/1, qua the petitioners stand quashed. Trial court record be returned back forthwith for being expeditiously proceeded against accused S.K. Ganguli in accordance with the law.