

A complaint under Section 138 of the Negotiable Instruments Act, 1881, is not maintainable by a third party even if the transaction affects him and that the same must be filed either by the payee or the holder in due course of the cheque

The **Allahabad High Court** in the case of **Rajesh Kukreja vs State of UP [Criminal Revision No. 2776 of 2013] dated January 28, 2026**, has held that a complaint under Section 138 of the Negotiable Instruments Act, 1881, is not maintainable by a third party even if the transaction affects him and that the same must be filed either by the payee or the holder in due course of the cheque. The Court observed that an authorised representative of the payee or holder of the cheque can initiate proceedings, being the power of attorney holder or the authorised signatory of the company, but the complaint is still to be in the name of the payee or holder of the cheque.

The Court perused Section 142 of the NI Act, which governs the cognizance of offences and noted that the Act explicitly mandates that “no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque”. The Court explained that, under Sections 7 and 9 of the Act, a Payee is the person named in the instrument to whom the money is directed to be paid, and a Holder in Due Course is a person who lawfully possesses the cheque for consideration and is entitled to the amount.

Thus, the Court concluded that a complaint under Section 138 NI Act is not maintainable by a third party and that it must be filed by the payee or the holder in due course of the cheque. The Court further clarified that even if a person is ‘indirectly affected’ by the transaction, they remain a stranger to the legal requirements of Section 138 if they do not qualify as the payee or holder in due course.