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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 475/2012 & CRL.M.A. 16575/2012

GALORE PACKAGING INDIA P.LTD. Appellant
Through: Mr. Yogesh Saxena, Advocate.

versus

SANJAY SHARMA Respondent
Through: None.

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Date of Decision: 25th September, 2012

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J :

Crl.M.A. 16575/2012 (condonation of delay) in Crl.L.P. 475/2012

Keeping in view the averments in the application, delay in filing the present leave to appeal is condoned.

Accordingly, the application stands disposed of.

Crl.L.P. 475/2012

1. Present leave to appeal has been filed challenging the judgment and order dated 23rd March, 2012 passed by the Metropolitan Magistrate, Delhi in Criminal Complaint being CC No. 870/2011 whereby the respondent has been acquitted.

2. The relevant facts of the present case are that four cheques issued by the respondent were dishonoured for want of *insufficient funds*. After dishonour of the aforesaid four cheques, appellant had issued letter dated 24th April, 2009. The relevant portion of the letter dated 24th April, 2009 is reproduced hereinbelow:-

“This is to inform and intimate you that your Cheque No.000113 dated 10.04.2009 for Rs.86000.00 issued for us as a part payment against our Invoice No. 673 dated 18.01.2009 has been returned unpaid by your Bank due to insufficient fund.

Earlier also, the Three Cheques Nos. 000074 dated 25.02.09, Cheque No. 000075 Dated 28.02.09 and 000076 dated 07.03.09 each Rs.86000.00 issued to us against the same invoice were returned by your Bank unpaid and upon your assurance we agreed to present the cheque again instead of Pay Order put we are as astonished to get your cheque returned again.

It is high time that you understand the gravity of situation and release our payment immediately without wasting any further time so that we are not forced to take any legal action against you.

We will appreciate if you release the payment immediately for smooth business relation.”

3. Thereafter, respondent sought fifteen days to make the payment. Accordingly, the appellant again presented the aforesaid four cheques, but the same were dishonoured. As no payment was received, appellant issued a legal notice dated 10th June, 2009.

4. Subsequently, on a complaint being filed by the appellant, the Metropolitan Magistrate dismissed the same on the ground that it was

beyond limitation. The relevant portion of the order passed by the Metropolitan Magistrate is reproduced hereinbelow:-

“14. So far as the repeated presentation of the cheques in question is concerned, cheque Ex.CW1/B was presented on 09.03.2009 and 04.06.2009, cheque Ex. CW1/C was presented on 11.04.2009, 16.04.2009 and 04.06.2009, cheque Ex. CW1/D was presented on 18.03.2009 and 04.06.2009 and cheque Ex.CW1/E was presented on 07.03.2009 and 04.06.2009.

*15. In **Prem Chand Vijay Kumar v Yash Pal Singh (2005) 4 SCC 417**, it was held by the Hon'ble Supreme Court that where first notice issued had been served but complaint was not filed as accused requested for some time to make payment, then presentation of the complaint after subsequent dishonour of the cheque and issue of second notice is not maintainable. It is well settled that if dishonour of a cheque has once snowballed into a cause of action, it is not permissible for a payee to create another cause of action with the same cheque.*

*16. In **Satish Kumar v Mohan Singh Gidda, 2009 (1) DCR 123**, the Hon'ble Punjab and Haryana High Court has held that once cause of action has accrued to the complainant at the time of dishonour of cheque it was not open to the complainant to present the cheque for the second time to bring the matter within limitation.*

*17. In **Sadanandan Bhadran v Madhvan Sunil Kumar, AIR 1998 SC 3043**, the Hon'ble Supreme Court has held that once notice is issued, limitation cannot be revived by getting cheque dishonoured and giving fresh notice. Cause of action arises only once though cheque can be presented any number of times. It cannot arise again by giving time to debtor to pay after issue of notice once and upon default against presentation to bank and dishonour.*

18. In terms of the aforesaid discussion, presentation of cheque by the complainant after the issuance of notice to the accused was not permissible for initiating proceedings u/s 138 of the N.I. Act.

*19. Considering that the legal demand notice dated 24.04.2009 is a valid notice u/s 138 of the NI Act, the complaint filed by the complainant is clearly barred by limitation. The cause of action arose upon failure of the accused to pay the cheque amount within 15 days of receipt of the said notice. The complaint should have been presented within one month from the date of arousal of cause of action. The attempt of the complainant to revive the cause of action by presenting the cheques again on 04.06.2009 is of no consequence. In view of the judgments in **Sadanandan Bhadran v Madhvan Sunil Kumar, Prem Chand Vijay Kumar v. Yash Pal Singh and Krishna Exports v Raju Das**, the complaint is clearly barred under the provisions of the NI Act. In view of the settled legal position, there is no need to consider other arguments raised. The complaint is dismissed. Accordingly, the accused is acquitted. The existing bail bond stands canceled. The surety stands discharged. File be consigned to the Record Room."*

5. Learned counsel for appellant submits that the aforesaid letter dated 24th April, 2009 is not a legal notice as contemplated under Section 138 of the Negotiable Instruments Act, 1881. In this connection, he refers to and relies upon a judgment of the Supreme Court in **Rahul Builders vs. Arihant Fertilizers & Chemicals and Anr., (2008) 2 SCC 321**, wherein it has been held as under:-

"8. Section 138 does not speak of a 15 days' notice. It contemplates service of notice and payment of the amount of cheque within 15 days from the date of receipt thereof. When the statute prescribes for service notice specifying a

particular period, it should be expressly stated. In absence of any such stipulation, it is difficult to hold that 15 days' notice was thereby contemplated. The High Court, therefore, was not correct in arriving at the aforementioned finding."

6. Having heard the learned counsel for appellant, this Court is of the view that it is first essential to outline the scope of interference of this Court in a leave to appeal. It is settled law that an acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. The power to grant leave must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused.

7. It is also well settled that the Appellate Court should reverse an acquittal only for very substantial and compelling reasons. In the event, two views are possible on the evidence adduced before the trial Court and the view taken by the trial Court is a plausible view, the Appellate Court should not interfere and substitute its own view against the plausible view taken by the trial Court. [See ***Chandrappa & Ors. Vs. State of Karnataka, (2007) 4 SCC 415*** and ***Arulvelu & Anr. Vs. State Represented by the Public Prosecutor & Anr., (2009) 10 SCC 206***].

8. This Court is further of the opinion that Section 138 of the Negotiable Instruments Act, 1881 does not prescribe any format of a notice. Section 138 of the Negotiable Instruments Act, 1881 provides that the payee or holder in the due course of the cheque should only make a demand for payment of said amount by giving a notice in writing to the drawer of the

cheque within fifteen days of receipt of information by him from the bank regarding the return of cheque as unpaid.

9. Consequently, what the law mandates is only a demand for payment by giving a notice in writing and not a legal notice in any prescribed format. In the opinion of this Court, appellant's letter dated 24th April, 2009 fulfils the aforesaid condition. In fact, the judgment of ***Rahul Builders vs. Arihant Fertilizers & Chemicals and Anr.*** (supra) far from supporting the appellant's submission is to the contrary.

10. This Court is in agreement with the conclusion reached by the trial Court as it is settled law that once a notice for demand of payment is issued then the cause of action and limitation for filing a complaint under Section 138 commences. It is pertinent to mention that in the present instance, no application has been filed seeking condonation of delay in filing the complaint.

Accordingly, the present leave to appeal is declined.

MANMOHAN, J

SEPTEMBER 25, 2012

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