



2025:AHC:142156

Neutral Citation No. - 2025:AHC:142156

Court No. - 81

Case :- CRIMINAL MISC. APPLICATION U/S 419 BNSS No. - 53 of 2025

Applicant :- Naushad

Opposite Party :- Raees Ahmed

Counsel for Applicant :- Faheem Ahmad, Sarve Nazir, Zafar Abbas

Hon'ble Manoj Bajaj, J.

Applicant- Naushad has filed this application under Section 419(4) Bhartiya Nagrik Suraksha Sanhita, 2023 for setting aside the impugned judgment dated 05.02.2025 passed by Additional Civil Judge, Court No. 02, Bijnor in Criminal Complaint No. 4244 of 2020; titled *Naushad v. Raees Ahmed*, under Section 138 Negotiable Instruments Act, 1881, Police Station Kotwali Shahar, District Bijnor, whereby opposite party has been acquitted.

Learned counsel for the applicant/ complainant has argued that a cheque worth Rs.2,90,000/- issued by the opposite party/ accused in favour of the complainant got dishonoured on 9.10.2020, and thereafter the statutory notice for demand of the said amount was served upon the accused, but no payment was made, therefore, a complaint under Section 138 Negotiable Instruments Act, 1881 was instituted by the complainant for prosecution of the accused. He submits that the said complaint has been erroneously dismissed by the trial Court vide order dated 05.02.2025 on the sole ground that the same is premature and does not disclose a valid cause of action.

Learned counsel while drawing the attention of the Court to Annexure-3, a purported reply on behalf of accused dated 20.11.2020 to the statutory notice dated 21.10.2020, has contended that once the demand made by the complainant has been specifically rejected by the accused, the complainant would be justified in instituting the complaint on the said cause of action. According to him, the condition (b) of Section 142(1) Negotiable Instruments Act, 1881, contemplating the cognizance of offence upon fulfillment of condition under clause (c) of the proviso to Section 138 Negotiable Instruments Act, 1881, as a preconditioned may not be necessary in the given facts of the case. While referring to the impugned judgement of acquittal, learned counsel for the applicant submits that the trial Court has presumed that the statutory notice issued on 21.10.2020 would have got served upon the accused in a period of one month i.e. upto 20.11.2020, and the trial Court proceeded to observe that

without waiting for the period mentioned in Section 142 (1) (b) Negotiable Instruments Act, 1881, the complainant instituted the complaint on 25.11.2020, thereby holding it to be premature. He prays that the impugned judgement dated 05.02.2025 be set-aside and the complaint be allowed by convicting the accused.

Upon hearing the learned counsel for the applicant/ complainant and considering his submissions, this Court finds that the entire controversy in the case is revolving around the calculation of time period provided under Section 138 read with Section 142 Negotiable Instruments Act, 1881. Section 138 Negotiable Instruments, 1881, particularly the proviso requires the three conditions to be fulfilled to constitute an offence, and the said penal provision is reproduced below :-

"138. Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

(a) the 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;

(b) the payee or the holder in due course of the cheque, as the case may be, 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 thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."

A reading of clause '(c)' of the above proviso is relevant in the present case and it is absolutely clear from this proviso that the cheque amount in the event of dishonour is to be paid by the drawer of the cheque within a period of fifteen days from the date of receipt of the notice of demand. Further, a close analysis of Section 142 Negotiable Instruments Act 1881, would show that the cognizance of the offence has to be taken, if, a valid cause of action is accrued in favour of the complainant, in terms of clause

(c) of the proviso to Section 138 Negotiable Instruments Act 1881. The argument of the learned counsel that the condition mentioned in clause (c) of the proviso to Section 138 Negotiable Instruments Act 1881, would be relevant where the accused has not replied to the statutory notice, and the non-payment of the cheque amount within stipulated period, would only offer a cause of action to the complainant to seek prosecution of the accused, is without any merit as the response by the accused would be a subject matter of evidence and before that stage, it is for the complainant to discharge the onus by establishing the fulfillment of conditions contemplated under Section 142 Negotiable Instruments Act, 1881.

Most importantly, a careful reading of the reply dated 20.11.2020 (Annexure-3) would reflect that the same is neither signed by the accused- Raees Ahmad nor bears the signatures of his counsel namely Nafees Ahmad Zafri, Advocate.

Thus, the said response cannot at all be considered as a reply of the accused. A perusal of the impugned judgement would show that the trial Court has relied upon a decision of Supreme Court in Criminal Appeal No.1190 of 2005 Subodh S. Salaskar V. Jayprakash M. Shah holding that if the notice is sent through a registered post at a correct address, the service is deemed to be effected in a period of thirty days and in this manner, the filing of the complaint on 25.11.2020 is after five days of the service of notice and before the expiry of the fifteen days period contemplated by clause (c) to the proviso of Section 138 Negotiable Instruments Act 1881. Thus, it is apparent that the trial Court has carefully examined the material on record while passing the impugned judgement of acquittal and the same is based upon correct appreciation of the law on the subject.

Resultantly, no case is made out for grant of leave to appeal and the application is dismissed.

Order Date :- 20.8.2025

Shiv