

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

CRM-A-100-MA-2013(O&M)

Decided on: 13.02.2015

Mukesh KumarApplicant

versus

Sukhwinder SinghRespondent

CORAM HON'BLE MRS. JUSTICE SABINA

Present Mr. J.S.Chahal, Advocate for the applicant.
Mr. Inderjit Singh, Advocate
for Mr. Gurdev Singh, Advocate for respondent.

SABINA, J

Applicant had filed complaint against the respondent under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'the Act') qua dishonour of cheque dated 087.07.2009 in the sum of Rs.76,000/-.

Applicant led his preliminary evidence and respondent was summoned to face the trial qua commission of offence punishable under Section 138 of the Act. Vide order dated 13.09.2012, trial Court ordered the acquittal of the respondent. Hence, the present application under Section 378(4) of the Code of Criminal Procedure (hereinafter 'Cr.P.C') for grant of leave to appeal by the complainant.

Learned counsel for the applicant has submitted that the trial Court had erred in dismissing the complaint on the ground of limitation. In fact the respondent had received the legal notice on 03.12.2009 and the complaint had been filed within 45 days of the receipt of legal notice by the respondent.

Learned counsel for the respondent, on the other hand, has opposed the application and has submitted that applicant had initially presented the

cheque for encashment in July 2009 and the cheque was dis-honoured by the bank vide memo dated 09.07.2009. However, legal notice was issued by the respondent with regard to dis-honour of the cheque vide memo dated 09.07.2009 after much delay i.e on 26.11.2009. Hence, the complaint had been rightly dismissed as being barred by limitation.

Facts in the present case are not in dispute. Applicant had filed a complaint against the respondent under Section 138 of the Act qua dis-honour of cheque dated 07.07.2009 in the sum of Rs.76,000/-. When the cheque was presented for encashment, it was dis-honoured by the bank vide memo dated 09.07.2009 with the remarks “ Funds Insufficient”. It appears that thereafter, the cheque was again presented for encashment and it was dis-honoured by the bank vide memo dated 18.11.2009. Applicant served legal notice on the respondent qua dis-honour of cheque. The said legal notice was proved on record before the trial Court as Ex.C4. Admittedly, the legal notice dated 26.11.2009 was served by the applicant on the respondent referring to the dis-honour of the cheque by the bank vide memo dated 09.07.2009. Thus, legal notice had not been served on the respondent qua dis-honour of cheque rejected vide memo dated 18.11.2009.

Section 138 of the Act reads as under:-

[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.

Thus, complainant was required to serve a notice on the respondent within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. The cheque was returned unpaid by the bank vide memo dated 09.07.2009 whereas the notice was served on the respondent Ex.C4 on 26.11.2009. Thus, notice itself had been served on the respondent after delay and consequently, the complaint filed by the applicant was clearly time barred.

Thus, the impugned order dated 13.07.2012 passed by the trial Court is liable to be upheld, though, for different reasons. Hence, no ground for grant of leave to appeal to the applicant is made out.

Dismissed.

13.02.2015
mamta

(SABINA)
JUDGE

CRM-12394-2013 IN CRM-A-100-MA-2013

MUKESH KUMAR V. SUKHWINDER SINGH

Present Mr.J.S.Chahal, Advocate for the applicant.
 Mr. Inderjit Singh, Advocate
 for Mr. Gurdev Singh, Advocate for the respondent.

Heard.

Application is allowed for the reasons mentioned, therein.
Delay of 101 days in filing the application under Section 378(4) Cr.P.C for
grant of leave to appeal is condoned.

13.02.2015
mamta

(SABINA)
JUDGE