IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-275-SBA of 2002

DATE OF DECISION: MARCH 19, 2015

BABU SINGH ...APPELLANT

VERSUS

S.SAMPURAN SINGH ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPAUL.

1. Whether the judgement should be reported in the digest? Yes/No

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PRESENT: MR. K.K.GUPTA, ADVOCATE FOR THE APPELLANT.
MR. MOHIL MALIK, ADVOCATE FOR THE RESPONDENT.

M. JEYAPAUL, J.

1. Complainant Babu Singh has challenged the acquittal of the accused for the charge under Section 138 of the Negotiable Instruments Act, 1881.

2. It is the case of the prosecution that accused Sardar Sampuran Singh who was running a travel agency, received a sum of ₹2 lacs from the complainant for sending his son Jasbir Singh abroad and issued a cheque dated 18.6.1997 in order to return the amount already taken by him in favour of the complainant. An FIR was already registered against the accused, as the whereabouts of the son of the complainant were not known. The cheque was returned dishonoured on presentation. Two registered notices were sent to the accused.

3. On the side of the complainant, Ravinder Kumar Sharma was examined as CW1, S.P.Sharma as CW2 and the complainant himself as CW3.

4. The trial Court having adverted to the evidence on record observed that there was some discrepancy as regards the amount allegedly paid by the complainant to the accused to send his son abroad. No witness was examined to corroborate the statement of CW3 as regards the payment of ₹2 lacs to the accused. The subsisting legal liability for issuance of cheque was not established by the complainant. The complainant had admitted that the cheque in question was issued by the accused under fear that the complainant may get a case registered against him. Statutory notice by the complainant had been issued beyond the period of limitation. The trial Court having further observed that statutory notice was not duly served on the accused, who was in jail, chose to acquit the accused.

5. The entire evidence on record was thoroughly scanned by me in the background of the rival submissions made. CW3 has deposed that the accused having received a sum of ₹2 lacs to send his son to foreign country issued the subject cheque with a view to return the amount taken by him.

6. The issuance of the cheque by the accused was not in dispute. The accused also faced criminal prosecution for missing of the son of the complainant, pursuant to which the accused was lodged in Central Jail, Burail. Had the accused not received a sum of ₹2 lacs from the complainant, he would not have faced trial for the missing of the son of the complainant and he would not have issued the subject cheque. The above facts and circumstances would go to establish that the accused having received a sum of ₹2 lacs, issued the subject cheque for the subsisting liability.

7. Learned counsel appearing for the appellant/complainant would

submit that there was some discrepancy as regards the exact amount paid by the complainant to the accused. The cheque was issued only for ₹2 lacs. Though the complainant has stated during the course of cross-examination that a sum of ₹2,10,000/- was paid by the complainant to the accused for sending his son abroad, the complainant has submitted in the complaint that he parted with only ₹2 lacs and the cheque also was issued only for the said amount. It is not case where cheque was issued for a larger amount than the amount which was actually parted with. Therefore, the above discrepancy does not cast any doubt in the case of the complainant.

8. It was submitted by learned counsel appearing for the accused that there was no corroboration of the statement made by CW3 as regards the payment of ₹2 lacs. As already observed, the facts and circumstances of the case would go to establish that the appellant in fact paid a sum of ₹2 lacs to send his son to a foreign country and with a view to return the said amount, he had issued the subject cheque for ₹2 lacs. Further, the evidence of CW3 is found to be reliable and trustworthy. Under such circumstances, no corroboration is required to support the version of CW3.

9. It was submitted by learned counsel appearing for the respondent/accused that the complainant admitted during the course of cross-examination that the cheque was issued by the accused under the fear that the complainant may get a case registered against him. It is not an admitted case of the complainant that he wielded threat and the accused issued a cheque even in a case where there was no subsisting liability. In the instant case, the whereabouts of the complainant's son who was allegedly sent by the accused to foreign country are not known. A criminal

case had already been lodged by the complainant as against the accused for missing of his son at the instance of the accused. No wonder, the accused was gripped with a fear that the complainant might get a case registered against him, therefore, he issued a cheque for the subsisting liability. The issuance of cheque under such circumstances, cannot be equated to a cheque which was issued under threat and coercion for a non-subsisting liability.

10. Learned counsel appearing for the appellant referring to the evidence of CW1 in the background of memo Ex.C2 issued by the banker would submit that the memo Ex.C2 was despatched by the banker only on 5.12.1997. But the trial Court having wrongly observed going by the date of memo that the memo was sent to the appellant on 27.11.1997 itself held that the statutory notice was issued only on 15.12.1997, well beyond the period of 15 days as contemplated under Section 138(b) of the Negotiable Instruments Act, 1881. Learned counsel appearing for the accused referring to Ex.C2 would submit that the trial Court has rightly observed that Ex.C2 was sent by the banker on 27.11.1997 itself. But the statutory notice was issued only on 15.12.1997 by the complainant to the accused well beyond the period of limitation prescribed under Section 138(b) of the Act.

11. The evidence of CW1 would go to establish that though Ex.C2 had been prepared by the bank on 27.11.1997, it was despatched only on 5.12.1997, as per the despatch register maintained by the banker. It could be presumed from the evidence of CW1 in the background of Ex.C2 that the appellant was notified of the dishonour of cheque vide memo Ex.C2 dated 27.11.1997 only on 5.12.1997. The statutory notice had been issued by the complainant on 15.12.1997. Under such circumstances, it is found that the

statutory notice had been issued well within the period of 15 days.

12. It was lastly submitted by learned counsel for the appellant that the trial Court completely lost sight of the documentary proof Ex.C10, a reply dated 27.1.1998 sent by the accused to the appellant. Learned counsel appearing for the accused would submit that the notice sent to the residential address of the accused returned with an endorsement that the accused had been confined in Burail jail. Therefore, the trial Court has rightly observed that proper service was not effected.

13. On a careful perusal of Ex.C10, it is found that the accused in his reply dated 27.1.1998 categorically admitted the fact that he received on 12.1.1998 the statutory notice issued by the appellant. When there is such an unequivocal admission as regards the receipt of notice, I am surprised to find that the trial Court has chosen to reject the case of the complainant on the ground that notice was not properly served on the accused.

14. In the above facts and circumstances, I am of the considered view that the appellant has established that the respondent/accused having received a sum of ₹2 lacs from the complainant for sending his son abroad, issued the subject cheque for subsisting liability, but the said cheque was returned by the banker with an endorsement that there were insufficient funds and that the statutory notice was also properly issued and served upon the accused. Thus, it is established that the accused has committed the offence under Section 138 of the Negotiable Instruments Act, 1881. Therefore, the accused is, convicted under Section 138 of the Negotiable Instruments Act, 1881 and is sentenced to undergo 1 year SI and to pay a fine of ₹2 lacs, failing which he shall undergo a further period of 6 months

SI.

15. The accused shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, Chandigarh, who shall send him to jail to undergo the sentence. If he fails to surrender, the learned Chief Judicial Magistrate, Chandigarh, shall take coercive steps to secure his presence.

March 19, 2015 **(M. JEYAPAUL)**
Gulati **JUDGE**