

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CRA-S-1323-SBA-2005**

**Date of Decision:28.09.2017**

**Harish Kumar**

**.....PETITIONER**

**V/S**

**Davinder Kumar**

**.....RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI**

**Present:** None for the appellant.

Mr.C.M.Munjhal, Advocate for the respondent.

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**A.B. CHAUDHARI J. (ORAL)**

Being aggrieved by the order of acquittal dated 23.09.2004 passed by the learned Sub Divisional Judicial Magistrate, Jalalabad in case No.510-2/29.9.97/22.8.2001/3 by which the learned trial Court acquitted the respondent for the offences under Section 138 of the Negotiable Instruments Act, 1881 (for short “the N.I. Act”) and under Section 420 of the Indian Penal Code (for short “IPC”).

None has appeared for the appellant.

Mr.C.M.Munjhal, Advocate has appeared on behalf of the respondent.

With the assistance of the learned counsel for the respondent, I have gone through the entire record. Apart from the reasons furnished by the learned trial Court which I would quote afterwards, I find from the record that the notice Ex.P-2, under Section 138 of the N.I.Act issued by Surender Bajaj, Advocate, Fazilka shows that Para No.1 that the respondent/accused had taken

loan of Rs.25,000/- from the appellant/complainant on 27.07.1990 by way of

friendly loan through cheque bearing No.638731 dated 27.07.1990 drawn on State Bank of India Jalalabad. In para no.3, it is mentioned that in order to discharge legal liabilities and duty, the respondent/accused had given a cheque in the sum of Rs.25,000/- bearing cheque No.435603 dated 30.08.1997 (Exh. P-4/ P-8). The cheque was thus put in the bank on the said cause of action, namely 30.08.1997, the date of the cheque and accordingly, the claim was made by filing the complaint under Section 138 of the N.I. Act.

As rightly contended by learned counsel for the respondent in the wake of the admitted facts namely, a friendly loan was taken on 27.07.1990, whereas the cheque for return thereof was of dated 30.08.1997, coupled with the admitted fact that the cheque that was given was blank and signed by the respondent the claim was obviously barred by law of limitation. It is well settled legal position that in any proceedings, the law of limitation will have application qua the Courts of law. Therefore it cannot be gainsaid that because proceedings under Section 138 of the N.I. Act were filed before the Court of law, namely JMIC for recovery of money and the proceedings being of quasi-criminal nature, the law of limitation would not apply. Even in the writ jurisdiction, the Apex Court has held in the Lipton India that the writ jurisdiction is also subject to law of limitation particularly in respect of money claims. Applying the same analogy when admittedly loan was taken in the year 1990, the same could not be claimed by bringing an action through cheque dated 30.08.1997 for recovery of the amount of Rs.25,000/- under the cheque. Hence, I hold that the action in question was clearly barred by law of limitation. Consequently, the liability under cheque could not be said to be a legally enforceable liability, and, therefore the complaint was not maintainable.

Apart from the above, what I find is that the trial Court has recorded a finding about the proof of service of statutory notice under Section 138 of the N.I.Act that has been discussed in paragraph 23. I quote the following relevant portion from the said paragraph:-

23. *“Now coming to the service of notice upon the accused, it is essential to mention in the complaint that complainant has issued notice to the accused in writing requiring him to make payment of the amount of the cheque within 15 days of the date of receipt of notice. It is essential to mention that notice was sent by registered post or UPC or by other modes. In the present complaint it is alleged by the complainant in para no.6 that notice of demand as required by law is also served upon the accused on 03.09.1997 under registered cover but till today the accused had failed to make payment.....*

*..... In the present case that complainant stated in his statement that he had sent notice through Sh. Surinder Kumar Bajaj Advocate to the accused and copy of that notice is Exh.P-9. The complainant did not tender into evidence postal receipts, UPC receipts to show that this notice was received by the accused. There is no mention in the complaint that accused had received notice.”*

In order to verify the correctness of the said finding, I have seen the record and I find that there is no proof on record about the service of the said statutory notice on the accused anywhere and, therefore, the finding is correct. It is settled legal position that the statutory notice under Section 138 of the N.I.Act has been held to be mandatory in the absence of which the complaint under Section 138 must fail. The said finding is therefore affirmed. The fact about the complainant holding the blank cheque have been mentioned by the learned trial Court in paragraph 20 and the relevant portion therefrom is

quoted hereunder :-

*“The complainant stated that the date on the cheque is filled in by him. He Voluntarily stated that has filled in the entire cheque himself. The cheque bears signatures of Davinder Kumar, in this way this cheque Exh. P-4/P-8 was signed by Davinder Kumar, Davinder Kumar had made no entry in any column of this cheque in his own hand. All the entries including the date, name of payee, the amount in figures and words were filled by the complainant himself. If the complainant had really issued the cheque dated 30.08.1997 to the complainant, then the accused might have made all the entries in cheque in his own hand. The accused is an educated person. He had signed the cheque in English language. This cheque bears no.435603. The complainant had issued cheque dated 27.07.1990 in favour of accused drawn at State Bank of India, Jalalabad”*

To sum up, the trial Court was right in recording the order of acquittal for all the above reasons.

In the result, the appeal stands dismissed.

**(A.B. CHAUDHARI)**  
**JUDGE**

28.09.2017  
Anjal

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|-----------------------------------|---------------|
| <b>Whether speaking/reasoned?</b> | <b>Yes/No</b> |
| <b>Whether reportable?</b>        | <b>Yes/No</b> |