

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-231-MA of 2015 (O&M)

Date of decision : 15.11.2017

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Jasbir Singh

.....Appellant

vs.

Suraj Rai

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Kartar Singh Malik, Advocate for the appellant

Mr. Krishan Mohan Vohra, Advocate for
Mr. Sumeet Goel, Advocate for the respondent.

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H. S. Madaan, J.

Complainant – Jasbir Singh had brought a complaint under Section 138 of the Negotiable Instruments Act, against accused Suraj Rai on the allegations that accused had borrowed a sum of Rs.1.50 lacs from the complainant for his domestic needs and to discharge that liability he had issued cheque No. 633901 dated 17.5.2013 in the sum of Rs.1.50 lacs drawn on State Bank of India, Safidon, in favour of complainant. The complainant deposited the cheque with his banker State Bank of India, Safidon, which in turn sent it to the banker of the accused. However, the cheque was returned un-cashed alongwith memo dated 17.5.2013, having remarks 'payment stopped'.

On coming to know about it, the complainant served a legal notice dated 18.5.2013, upon the accused sent as per registered post, calling upon the accused to make payment within 15 days of the receipt of notice but to no effect. As such he filed a complaint in the Court of Judicial Magistrate Ist Class, Safidon.

After recording preliminary evidence, the accused was ordered to be summoned to face trial for offence under Section 138 of the Negotiable Instruments Act. On appearance of the accused, in the Court he was admitted to bail and thereafter, notice of accusation for offence under Section 138 of the Negotiable Instruments Act was served upon the accused, to which he pleaded not guilty and claimed trial.

During the course of his evidence, the complainant got his statement recorded as PW-1 and repeated the allegations as contained in the complaint. The complainant had proved in evidence cheque in question as Exhibit P-1, memo regarding dishonour of cheque as Exhibit P-2, copy of legal notice dated 18.5.2013, as Exhibit P-3, postal receipt as Exhibit P-4, acknowledgment card as Exhibit P-5 and statement of account as Exhibit PW 2/A. He further examined Naresh Kumar, Assistant Clerk, State Bank of India, Safidon, as PW-2, who brought the bank record regarding presentation of the cheque and its return. Thereafter evidence of complainant was closed.

Statement of accused was recorded under Section 313 Cr.P.C. and all the incriminating circumstances appearing against the accused were put to him, but he denied the same, contending that he is innocent and has been falsely involved in this case.

During his defence evidence, the accused examined Naresh Kumar, clerk of State Bank of India, Safidon, as DW-1 and Ram Mehar, Clerk of Mr. M.P. Jain, Advocate as DW-2. Learned counsel for the accused tendered in evidence documents – statement of account of accused as Exhibit D-1, legal notice dated 27.5.2013 as Exhibit D-2, postal receipt as Exhibit D-3 and acknowledgment card as Exhibit D-4.

After hearing arguments, the trial Magistrate, dismissed the complaint and acquitted the accused of the charge framed against him vide judgment dated 16.12.2014, for the following reason:-

- i) Legal notice got served by the complainant upon the accused was invalid for the reason that notice demanding payment should be of the amount covered by the cheque and if the demand is less or more than the cheque amount, the notice is invalid. Reference was made to citation **Gaurav Singh Rathore and another vs. M/s Tai-Pan Traders Ltd, 2008 (3) RCR (Criminal) 168 (P&H).**

Aggrieved by the dismissal of his complaint and acquittal of the accused, the complainant had approached this Court moving an application under Section 378 (4) Cr.P.C. for grant of special leave to appeal against the impugned judgment.

Notice of the application was given to the respondent, which has put in appearance.

Learned counsel for the appellant has referred to citation **Suman Sethi vs. Ajay K. Churiwal 2000 (1) RCR (Criminal) 780**, by

the Apex Court, wherein it was observed that in a complaint relating to dishonour of a cheque, when the notice demanding payment is in excess of amount of cheque, the notice is not valid. However, if breakup of the amount i.e. amount of cheque, interest, damages is given separately, notice would be valid.

Learned counsel for the respondent had referred to citation **Ramaraj vs. Rajesh Kumar 2014 (4) RCR (Criminal) 455**, by High Court of Kerala, wherein it was observed that when in a cheque bouncing case, notice was sent to accused demanding amount more than covered by the cheque, that notice was found to be not in accordance with provisions of Section 138 of the Negotiable Instruments Act. Hence the complaint was not maintainable. He further cited authority **M/s Padmavathi Authomobiles vs. Mahaveer Urban Co-operative Society Ltd., Gokak, District Belgaum 2014 (3) RCR (Criminal) 489**, wherein while dealing with a cheque bouncing case, when the complainant had sent notice to the accused demanding the cheque amount, but also added interest, the amount thus demanded was more than cheque amount and notice was held to be not defective.

The trial Magistrate has dismissed the complaint observing that as legal demand notice sent by the complainant to the accused contains claim of amount more than the cheque money, therefore, it is not a valid notice and it amounts to non-fulfilling of necessary ingredients of Section 138 of the Negotiable Instruments Act, as such the complaint was dismissed.

Such inference reached at by the trial Magistrate does not

call for any interference by this Court. The judgment passed by the trial Court is well reasoned one, based on proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. No ground is made out to upset the said judgment.

Therefore, the application seeking leave to appeal is found to be without and merit and is dismissed accordingly.

(**H.S. Madaan**)
Judge

15.11.2017

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No