

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

**Criminal Appeal No.S-136-SB of 2002
Date of Decision:-08.11.2017**

Punjab Energy Development Agency

...Appellant

Versus

Punjab Wireless Systems Ltd. and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present:- Mr. S.S. Katnoria, Advocate
for the appellant.

None for respondent No.1.

FATEH DEEP SINGH J.

This appeal by the appellant Punjab Energy Development Agency (in short 'PEDA') is against the order dated 29.11.1999 whereby an application moved on behalf of accused No.1,2 and 3 in the said case for dropping of the proceedings against them and has dismissed the complaint being not maintainable and thereby discharged the accused.

The brief facts are to the effect that accused had issued two cheques i.e. first bearing No.0417717 dated 25.3.1999 for a sum of Rs.17,13,973/- and second bearing No.0417716 dated 31.3.1999 for

Rs.16,76,712/-, in favour of the appellant in lieu of loan earlier they took for a sum of Rs.4,00,00,000/- (rupees four crores), which was stipulated to be paid back with interest as per the terms of the settlement. The cheques were drawn on State Bank of Patiala, Chandigarh branch from the account of accused. The same were duly presented by the complainant to its banker Punjab & Sind Bank, Chandigarh, however, the same were returned back with the remarks "exceeds arrangements". It is alleged that on asking of the accused these cheques were again presented on 16.6.1999, however, the same stood dishonoured on 16.6.1999. The complainant made demand of the amount in question and legal notice was also sent and when nothing transpired led to filing of the present complaint on 13.8.1999, leading to summoning of accused vide order dated 29.8.1999 by the Judicial Magistrate 1st Class. It was thereafter the instant application was moved leading to passing of the impugned order.

Heard learned counsel for the petitioner.

Appreciating the submissions it is by no means disputed and is well elicited from the records that cheque No.0417716 (Ex.C5) was dishonoured and memo (Ex.C7) was issued on 07.4.1999, another cheque bearing No.0417717 (Ex.C6) was also dishonoured and memo (Ex.C8) in this regard was issued on 7.4.1999 and prior thereto memos dated 17.6.1999 (Ex. C9 and C10) were issued regarding dishonour of cheques. Legal notice was purportedly issued on 2.6.1999 and the complaint was filed on 13.8.1999.

The learned counsel for the appellant could not convince this

Court by any means when admittedly both the cheques (Ex.C5 and C7) have been dishonoured on 17.6.1999 and now notice in that regard could be issued prior thereto on 2.6.1999. When earlier the two cheques were dishonoured on 7.4.1999 and notice was issued on 21.4.1999 whereas the complaint has been filed on 13.8.1999. Under the unamended provisions of Section 138 of the N.I. Act the demand for payment of the said amount of the cheques is to be made by giving a notice in writing to the drawer of the cheques within 15 days of the dishonour i.e. dishonour had taken place on 17.6.1999 and therefore the cheque notice ought to have been issued from the date of knowledge of the same within 15 days i.e. 03.7.1999 when there is no evidence to this effect proved on record by the complainant upon whom the onus lay and even otherwise where the drawer of such a cheques failed to make payment of the said amount within 15 days on receipt of notice, a complaint needs to be made as per the unamended provisions within one month of the cause of action that arises by virtue of Section 138 (c) of the Act and therefore the complaint ought to have been made within one month of the due service of the notice and the present complaint has come about on 13.8.1999 beyond the prescribed period of limitation. Shri S.S. Katnoria, Advocate learned counsel for the petitioner could not satisfactorily counter the question put to him that since the amendment to Section 138 of the Act has come about w.e.f. 6.2.2003 and the present case and cause of action accrues prior thereto and in view of settled position of law for which reliance is placed on **S.L. Srinivasa Jute Twine Mills Pvt. Ltd. vs. Union of India and another 2006(2) SCC 740** where their

Lordship of the Hon'ble Apex Court have laid down the amendment to a statute is always prospective unless specifically or impliedly make applicable retrospectively and therefore even in the present case the right that vests under the unamended provisions cannot be taken away by subsequent amendment and in the present case subsequent amendment nowhere shows that it has a retrospective effect. No doubt as such in laid down in **MSR Leathers vs. S. Palaniappan and another, 2012(4) RCR (Civil) 485** that a payee or a holder of cheque can initiate prosecution for an offence under Section 138 of the Act for the dishonour of the cheque for the second time if he had not initiated any action on the earlier cause of action, which is 3 Judges Bench view and therefore no benefit can be derived by the appellant side by such an amendment. The accused company, as is evident from the records, had been wound up by the proceedings of the Company Law Board vide order dated 1.2.2001 and Official Liquidator was appointed and even the very provisions of Section 141 of N.I. Act read with Section 138 of the Act, every Director of such a company who was incharge and responsible to that company for the conduct of a business shall be deemed to be guilty and which requirement has never been made in the notice holding as two of the persons arrayed as accused were vicariously liable and thus guilty for the commission of offence. The impugned order has taken care when initially the first letter by way of notice was issued on 21.4.1999 further adds to the woes of the complainant and by that analogy the complainant certainly falls beyond the scope of limitation and ought to have been filed within 15 days of 21.4.1999 and not after second notice

which was issued on 1.7.1999. The impugned order certainly does not calls for any interference and as such is upheld and the appeal of the appellant deserves to be dismissed.

Hence, the present appeal stands dismissed.

November 08, 2017
Vijay Asija

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No