

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

CRM-A-893-MA of 2017 (O&M)

DECIDED ON: 26th May, 2022

Mithlesh Srivastava

.....APPLICANT

VERSUS

Sh. Rakesh Bansal and another

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Aakash Juneja, Advocate for petitioner.

AVNEESH JHINGAN, J (ORAL)

This is an application under Section 378(4) Cr.P.C. for grant of leave to file appeal against the acquittal of the accused (Respondents) in Criminal Complaint No. 894 of 2013, titled as *Mithlesh Srivastava Versus Sh. Rakesh Bansal and another*.

There was a dispute between the parties with regard to payment made for securing loan from the bank, a complaint was made but the matter was compromised. The accused issued cheque for an amount of Rs.45,000/- for making payment in consonance with the term of compromise. On presentation the cheque, was dishonoured on 24th July 2013 with the remarks “*insufficient funds*”. A legal notice was served vide registered post dated 2nd September 2013. The accused were acquitted relying upon the decision in *Unipal India Ltd. Vs. State Government of NCT of Delhi III (2001) SLT 222*, on the ground that no notice was served within thirty days from return of cheque.

Learned counsel for the applicant submits that the trial Court erred in acquitting the accused *inspite of* the fact that signatures on the cheque were admitted and the cheque was issued for discharge of liability.

The Supreme Court in *Kamlesh Kumar Versus State of Bihar and another 2014 AIR (Supreme Court) 660* relying upon its earlier decision in *MSR Leathers V. S. Palaniappan and another, (2013)1 SCC 177* held that non-issuance of legal notice within 30 days of dishonour of cheque is fatal for complaint filed under Section 138 of Negotiable Instrument Act, 1881. Relevant para is quoted below:

"9. To this extent, there cannot be any quarrel and the act of the complainant in presenting the cheque again cannot be questioned by the appellant. However, we find that when the cheque was presented second time on 10.11.2008 and was returned unpaid, legal notice for demand was issued only on 17.12.2008 which was not within 30 days of the receipt of the information by him from the Bank regarding the return of the cheque as unpaid. Non-issuance of notice within the limitation prescribed has rendered the complaint as not maintainable.

10. In *MSR Leathers* (supra), this Court analyzed the provisions of [Sections 138](#) and [142](#) of the N.I. Act in the following manner:

“The proviso to [Section 138](#), however, is all important and stipulates three distinct conditions precedent, which must be satisfied before the dishonor of a cheque can constitute an offence and become punishable. The first condition is that the cheque ought to have 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. The second condition is that the payee or the holder in due course of the cheque, as the case may be, ought to make 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. The third condition is that the drawer of such a cheque should have failed to make payment of the said amount of money to the payee or as the case may, to the holder in due course of the cheque within fifteen days of the receipt of the said notice. It is only upon the satisfaction of all the three conditions mentioned above and enumerated under the proviso to [Section 138](#) as clauses (a), (b) and (c) thereof that an offence under [Section 138](#) can be said to have been committed by the person issuing the cheque.....”

No case is made out for grant of leave to file appeal as there is no illegality or factual error in the impugned order.

Dismissed.

Since the main case has been decided, the pending application, if any is rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

26th May, 2022
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>