

255 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-248-2022

Date of Decision: 26th July, 2022

Sanjay Kumar

... Applicant

Versus

Annu

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sukesh K. Jindal, Advocate for the applicant.

AVNEESH JHINGAN , J.(Oral)

1. This application is filed for grant of leave to appeal against judgment of acquittal in Complaint No. NACT-45/2016, under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act').

2. The case set up as per the applicant was that respondent (accused) borrowed Rs.4,16,000/- from the applicant as friendly loan and promised to pay back the same with interest at the rate of two percent per month. A pronote and a receipt as acknowledgement of loan were executed. To discharge the liability cheque bearing No. 755742, dated 1st December, 2015 was issued. On presentation, the cheque was returned with the remarks 'funds insufficient'. After issuance of legal notice complaint was filed.

3. The respondent took a defence that a cheque given for security with regard to the transactions of purchase of gold was misused. There was no friendly relation between the applicant and the accused.

4. It was pleaded that friendly loan was advanced to the respondent but the applicant during the cross-examination faltered to show that the respondent was known to him. The legal notice exhibit P-10

was sent and posted by A.K. Singla, Advocate. The signatory of the notice

was not examined. As there was no proof of delivery of demand notice and the accused was acquitted.

5. Learned counsel for the applicant submits that the postal receipt was exhibiting as P-11, which shows that notice was sent to Annu on 21st December, 2015 by Ajay Kumar. The contention is that the exhibition of Ex. P-10 was objected by the respondent but the objection was not decided. Reliance is placed on Section 27 of General Clauses Act, 1897. The contention is that the trial Court erred in not considering that presumption under Section 118 and 139 were in favour of the holder of the cheque

6. Heard learned counsel for the applicant at length and perused the record produced by him.

7. In **Dashrath Rupsingh Rathod v. State of Maharashtra and another**, Criminal Appeal No. 2287 of 2009, decided on 1.8.2014 the Supreme Court held as under:

“31. To sum up:

(i) An offence under [Section 138](#) of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.

(ii) Cognizance of any such offence is however forbidden under [Section 142](#) of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to [Section 138](#).

(iii) The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if

(a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue.

(b) If the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque and

(c) If the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.

(iv) The facts constituting cause of action do not constitute the ingredients of the offence under [Section 138](#) of the Act.

(v) The proviso to [Section 138](#) simply postpones/defers institution of criminal proceedings and taking of cognizance by the Court till such time cause of action in terms of clause (c) of proviso accrues to the complainant.

(vi) Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured.

(vii) The general rule stipulated under [Section 177](#) of Cr.P.C applies to cases under [Section 138](#) of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the Court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under [Section 138](#) is committed along with other offences in a single transaction within the meaning of [Section 220\(1\)](#) read with [Section 184](#) of the Code of Criminal Procedure or is covered by the provisions of [Section 182\(1\)](#) read with [Sections 184](#) and [220](#) thereof.”

(emphasis supplied)

8. The cause of action to file complaint under Section 138 of the Act arises on demand being made by holder of cheque within thirty days of dishonour of cheque and on failure of drawer to pay the amount within fifteen days of receipt of notice. Service of notice on the drawer prior to filing of complaint is *sin qua non*.

9. The contention raised by learned counsel for the applicant with regard to the service of legal notice needs to be looked into from the factual aspect.

10. There cannot be any quarrel on the proposition that Section 27 of General Clauses Act raises a presumption for service.

11. Section 27 of General Clauses Act is reproduced:-

[Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression “service” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

12. It cannot be lost sight that presumption is available to the dispatcher of the notice. The pre-requisites for the service are that a letter containing the document should be properly addressed, pre-paid and sent by registered post.

13. From the perusal of the postal receipt produced, it is forthcoming that the letter was sent to Annu, City name is mentioned as Jind. The letter was sent by Ajay Kumar. There is no mention in postal receipt of address to where the letter was sent. The applicant had not posted the notice, hence could not claim knowledge of the address where the letter was sent and with regard to the content of the envelop. There is another aspect to be considered, with the computerization of the Post offices, tracking report of the registered letter is available. Knowing well that the applicant was not the dispatcher, yet no tracking report was produced. For the reasons best known, neither the sender Ajay Kumar was examined nor his affidavit filed.

14. It was for the applicant to establish that cause of action had arisen for filing the complaint i.e. Cheque was dishonoured, within thirty days of return of cheque, notice was issued and drawer failed to pay the

15. The non deciding of objection raised by respondent qua exhibiting of Ex P-10 does not improve the case of applicant to prove that notice was served on the respondent.
16. The complaint was dismissed on failure of applicant to show that notice was served. The stage of raising presumptions under Sections 118 and 139 of the Act in favour of cheque holder would have come on later stage. In other words the court after being satisfied that cause of action had arisen for filing of complaint, the presumption under Section 118/139 of the Act was to be taken against the drawer of the cheque, at that stage.
17. Considering the above factual aspect, the finding recorded by the trial Court that the applicant failed to prove service of notice calls for no interference.
18. No case is made out for grant of leave, as no legal or factual error, much less perversity has been pointed out in the impugned judgment.
19. The application is dismissed.

(AVNEESH JHINGAN)
JUDGE

26th July, 2022
Parveen Sharma

Whether reasoned/speaking	Yes
Whether reportable	Yes