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

**CRA-S-1841-SBA-2006 (O&M)
Date of Decision: 30.01.2023**

Bharat Kosh ...Appellant

Versus

Sahib Ram ... Respondent

**CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present : Mr. C.M. Munjal, Advocate
for the appellant.

Mr. S.P.S. Tinna, Advocate
for the respondent.

**N.S.SHEKHAWAT, J.**

1. The present appeal is directed against the judgment dated 25.11.2005 passed by the Sub-Divisional Judicial Magistrate, Malout, whereby, the respondent was ordered to be acquitted. The trial Court held that the prosecution had failed to prove its case beyond the shadow of doubt under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as **'the Act'**) and by extending the benefit of doubt, the respondent was ordered to be acquitted.

2. As per the case of the complainant, he was running a business of commission agents in the name and style of M/s Kamra Brothers in New Grain Market, Malout, as its sole proprietor. He was maintaining account books in its ordinary course of business and the entries were made at the spot and the balance was checked daily. The respondent/accused had dealings with the appellant/complainant and he had been borrowing money on different occasions. He had also been purchasing the goods through the appellant on manotis. The entries of transactions of cash loan or purchase of goods on manoti used to be made in the account books of the appellant. The

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respondent/accused settled his account with the appellant on 22.05.1999, to which effect an entry was made by the appellant. The respondent after understanding the contents of the entries, confirmed the balance of Rs. 5,35,000/- by putting his signatures below the entry on the revenue stamp. After this, the accused had been borrowing money and as per account books, an amount of Rs.5,40,170/- became due towards the accused on 22.06.1999. In discharge of the above said debt, the respondent issued a cheque bearing No. 176662 dated 02.07.1999 through his banker State Bank of Punjab, Malout, but the same was received back unrealized on the ground that the account was closed. Thereafter, a notice under Section 138 of the Act was served upon the respondent, yet he failed to make the payment. With these broad averments, the complaint was filed by the appellant against the respondent.

3. I have heard learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

4. Learned counsel for the appellant vehemently argued that the impugned judgment is based on misappreciation of evidence and law. The learned trial Court failed to appreciate that the respondent had issued cheque in dispute for a sum of Rs. 2 lacs and had assured that the cheque shall be encashed on presentation in the bank as sufficient amount was lying in the account. Still further, the findings recorded by the learned Magistrate with regard to the issuance of notice and its service, are apparently unsustainable as the service had been effected on the respondent. Still further, the learned trial Court wrongly observed that the cheques were in possession of the appellant/complainant, on the date when it was presented to the bank. Still further, the learned trial Court wrongly held that the matter had

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been settled between the parties and was compromised. In fact, the appellant entered into the compromise with the respondent in the Lok Adalat, but the respondent did not make the payment and backed out from the compromise. Consequently, no reliance could have placed on the said factum of compromise and the impugned judgment is legally unsustainable.

5. On the contrary, learned counsel for the respondent submitted that the service was not properly effected on the respondent. Further, the learned trial Court has recorded valid reasons for acquitting the respondent and the findings recorded by the learned trial Court, are well reasoned and sustainable.

6. I have heard the learned counsel for the parties and considered the rival submissions made by both the sides. In fact, the learned trial court has rightly observed that Bharat Kosh, complainant while appearing as PW4 admitted that the post office of the village of accused was Sardarpura but in the notice, post office was written as Bahadur Khera, which was wrong address and since the address on the notice was wrong and notice had been received back unserved/undelivered with the report of refusal, it could not be presumed that notice had been served upon the accused. So it was apparent that no service had been validly effected on the respondent.

7. Still further, in the instant case, the complaint was filed with regard to the dishonour of the cheque in question. However, from the evidence, it is apparent that the cheque had already been with the complainant. Even in the account opening form, the appellant had introduced the respondent in the bank on 09.04.1999 and the account was opened on the same day. I also agree with the findings recorded by the learned trial Court that the cheques were already in

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possession of the appellant/complainant. Still further, as per the appellant, the two cheques were given to him on 02.07.1999 and 13.07.1999 by the respondent. The appellant had already admitted that the respondent/accused had taken two loans after giving the cheques in discharge of his liability. The last entry of taking loan is 22.05.1999. If the account was settled on 22.05.1999, then the version of the appellant that the respondent had taken loan twice after issuance of cheques is falsified by his own statement, because the cheques were issued on 02.07.1999 and 13.07.1999. This further proves that the cheques were already in possession of the appellant as he admitted that after issuance of the cheques, the appellant had taken the loan twice. Still further, the appellant also admitted that the cheques had been given to him on 02.07.1999 and 13.07.1999. The cheque dated 02.07.1999 had been dishonoured on the same date, i.e. 02.07.1999. Consequently, it is unbelievable that the appellant had taken cheque from the respondent on 13.07.1999 as the appellant was already aware of the fact that the account has already been closed. If he had the knowledge of closure of account by the respondent on 02.07.1999, he would not have taken the cheque from the respondent on 13.07.1999. Thus, the learned trial court has rightly acquitted the respondent. Still further, from the file, it is apparent that the parties had compromised the matter. Even, the appellant had made a statement that since the respondent had undertaken to pay the disputed amount of cheque, so he did not want to proceed with the complaint. But the complaint was not dismissed on that very date. However, the civil suit filed by the appellant/complainant was already decreed as compromised vide order dated 05.09.2002. The civil suit of the same amount was ordered to be decreed and the appellant got

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the civil suit decreed by inducing the respondent that he would withdraw the complaint, but he did not do so. Since the matter had already been settled between the parties, the continuation of further proceedings before the trial Court was an abuse of process of law. Thus, I find no ground to interfere with the judgment dated 25.11.2005 passed by the Sub-Divisional Judicial Magistrate, Malout as the impugned judgment does not suffer from any illegality or perversity.

8. As a consequence, the impugned judgment dated 25.11.2005 passed by the Sub-Divisional Judicial Magistrate, Malout, is ordered to be upheld and affirmed and the appeal is accordingly dismissed.

9. All pending applications, if any, are disposed off, accordingly.

10. Records of the Court below be sent back.

**11.04.2023** **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No

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