

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

**CRA-S-2901-SB-2010 (O&M)
Date of Decision: 14.03.2023**

Jasbir Singh Sodhi	Versus	...Appellant
G.S. Bhalla and others		... Respondents

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

Present : Mr. H.S. Randhawa, Advocate
as Amicus Curiae for the appellant.

Ms. Sheenu Sura, Advocate
as Amicus Curiae for the respondents.

N.S.SHEKHAWAT, J.

Challenging the judgment of acquittal dated 13.03.2008 passed by the Court of learned Judicial Magistrate 1st Class, Chandigarh, the appellant/complainant has preferred the present appeal before this Court. The learned Judicial Magistrate 1st Class concluded that the appellant had failed to prove the notice of acquisition, served upon the respondents/accused for the commission of offence punishable under Section 138 of the Negotiable Instruments Act, 138 (hereinafter to be referred as '**the Act**') and the respondents were ordered to be acquitted of the same.

The case set up by the appellant/complainant is that he had business dealings with the respondents/accused for the supply of plastic bottles of various sizes since September 1997. The respondents had been making payments of all the goods regularly. As per the appellant, Cheque No. 473965 dated 17.12.1997 drawn on Punjab National Bank, Civil Lines, Bhatinda for Rs. 90,000/- was handed over by the respondents to the appellant towards certain outstanding payments. However, on presentation, the said cheque was dishonoured on account of insufficient funds. He immediately

contacted the respondents, who apologized for this incidence and promised to make the payment in due course. On the assurance by the respondents, the appellant continued to supply goods to the respondents regularly. It had been stated that the appellant supplied goods to the respondents on 07.01.1998, 09.01.1998, 13.01.1998, 24.01.1998 and 30.01.1998, which was outstanding. The appellant contacted the respondent No. 1 number of times on telephone, however, only verbal assurance was given and the payment was delayed. Even after repeated requests, the accounts could not be settled. On the assurance by the respondents, the appellant again presented the cheque, but the same was again dishonoured with the remarks "Exceeds Arrangement" vide memo dated 11.04.1998. The appellant sent a legal notice dated 16.04.1998 to the accused through registered AD posts on 17.04.1998. However, the said notice was received undelivered on 01.05.1998 with the report that the addressee could not be found after several visits. Still further, the copies of the legal notice dated 16.04.1998 were again sent by the appellant to the respondents vide registered AD on 06.06.1998 and 17.06.1998. However, those were returned back with the same remarks on 20.06.1998 and 27.06.1998. After the appellant made several efforts to serve the notice on the accused by sending copies of the legal notice dated 16.04.1998 through courier but the respondents could not be served. Finally on 04.09.1998, the appellant succeeded in serving the notice on the accused at their residence. The respondent No. 2 received notice and signed her acknowledgement on a copy of the notice. The appellant further alleged in the complaint that after receipt

the payment of Rs. 90,000/- within a period of 15 days. However, no such payment was made and, consequently, the complaint was filed by the appellant.

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

Learned counsel for the appellant vehemently argued that the learned trial Court has ignored the evidence on record and the settled law. Learned counsel for the appellant vehemently argued that a notice under Section 138 of the Act was issued within 15 days of the receipt of the intimation regarding dishonour of the cheque. Even, there was no need to issue further legal notices and the learned trial Court has acquitted the accused by adopting a hyper technical approach. Still further, the accused had sought discharge by moving an application under Section 245 Cr.P.C. on the ground that the complainant had failed to issue notice as per the statutory requirements, however, the said application was withdrawn by the respondents on 27.11.2004. Apart from that, even a criminal revision was filed by the respondents before the Court of learned Additional Sessions Judge involving the same issue and the same was dismissed. Consequently, the learned trial Court committed grave error in acquitting the accused on the same ground. On the other hand, learned counsel for the respondents contended that the final notice was issued by the appellant beyond the period of limitation prescribed by the statute, thus, there was no cause of action in favour of the present appellant and the appellant has been rightly acquitted by the learned trial Court.

After due consideration of arguments on both the sides, I am of the considered view that the learned trial Court has recorded well reasoned findings and the same are liable to be upheld. As per the provisions of Section 138 of the Act, when any cheque drawn by a person, for discharging of any debt or other legal liability is returned unpaid due to insufficiency of funds etc., such person shall be deemed to have committed an offence under the provisions of the Act. However, the said provisions also provides that anything contained under Section 138 of the Act shall apply unless (i) the cheque has been presented to the bank within a period of six months from the date on which it was drawn or within a period of its validity whichever is earlier; (ii) payee or holder in due course of the cheque, as the case may be, makes a demand for the demand of said amount of money by giving a notice in writing to the drawer of the cheque within a period of 15 days of the receipt of the information by him from the bank regarding the return of the cheque as unpaid; (iii) the drawer of such cheque fails to make the payment of the said amount of money to the payee or to the holder in due course of the cheque, within 15 days of receipt of the said notice.

Thus, it is apparent that the holder in due course of a cheque or the payee, as the case may be, was under a legal obligation to issue legal notice, making a demand for the payment of the amount of the cheque, within a period of 15 days of dishonour of the cheque. In case, the drawer of the cheque, failed to make the payment of the said amount of money to the payee or to the holder in due course of the cheque, within a period of 15 days from the receipt of the notice,

the cause of action would accrue in favour of the payee or the holder

in due course to present a complaint under Section 138 of the Act before the competent Court. At this stage, it requires mention that w.e.f. 06.02.2003, the period for issuing legal notice has been increased to 30 days from 15 days. However, on the date of dishonour of the cheque in the present case, the period of 15 days was prescribed by the statute for issuing a legal notice.

Even adverting to the facts of the instant case, the cheque in this case was dishonoured in April 1998 and the appellant/complainant acquired the knowledge of this dishonour vide memo dated 11.04.1998. The legal notice was sent by the appellant to the respondents on 16.04.1998 and was sent by registered AD on 17.04.1998 within a prescribed statutory time limit. The notice was received back and delivered on 01.05.1998 with the report that the addressee was not found even after several visits. In fact, the appellant did not stop here. The copies of notice dated 16.04.1998 were again sent by him vide registered AD on 06.06.1998 and 17.06.1998. However, these copies were again returned with the same remarks that the addressee was not found even after several visits. Thereafter, the complainant made many efforts to serve the respondents by sending the copies of the notice dated 16.04.1998 through courier but the respondents could not be served. Ultimately, on 04.09.1998, the appellant finally succeeded in serving the respondents at their address and the respondent No. 2 had received the notice and, thereafter, the complaint was filed on 24.09.1998. The learned trial Court rightly held that the notice had to be sent within a period of 15 days from the receipt of the intimation regarding the

dishonour of the cheque and if the notice was sent even after the

period of 15 days from the receipt of the information, regarding the dishonour of the cheque, the present complaint was not maintainable against the respondents. The findings recorded by the learned trial Court are upheld. Apart from that, even after the application under Section 245 Cr.P.C. filed by the respondents was dismissed or any criminal revision filed by the present appellant had been dismissed, during the pendency of the trial, it would have no effect on the merits of the case. At the time of final disposal of a case, the learned trial Court is bound to consider the evidence led by the parties and is not bound by the interim orders passed during the course of trial. Even otherwise, the said issue was kept open by the learned trial Court as well.

Apart from that, I have also considered the findings recorded by the learned trial Court with regard to the liability of the respondents to make the payment to the present appellant. The learned trial Court correctly held that after the dishonour of the cheque, the accused had made payment of Rs. 90,000/- by way of two drafts, to the appellant and the appellant had shown his ignorance about encashing the said two drafts. However, the respondents were successful in proving the encashment of the two drafts by the complainant, by examining the official witnesses of the bank, where the drafts were got prepared and were encashed. Consequently, it was proved on record that the amount of Rs. 90,000/-, i.e. the cheque amount already stood paid to the appellant by the respondents and there was no existing liability against the present appellant.

It has been held by the Hon'ble Supreme Court in the matter of Dwarka Dass and others Vs. State of Haryana 2003 AIR (Supreme Court) 185 as under:-

3. Two earlier decisions of this Court ought also to be noticed in this context, namely, Ramesh Babulal Doshi v. State of Gujarat (1996(9) SCC 225) : 1996(3) RCR (Criminal) 188 (SC), wherein in paragraph 7 of the Report this Court observed :

"7. Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above-quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate court is first required to seek an

answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial court are sustainable or not."

4. The other decision, though slightly earlier in point of time, happens to be that of Tota Singh [Tota Singh & anr. v. State of Punjab (1987(2) SCC 529) : 1987(2) RCR (Criminal) 35 (SC)], wherein this court in paragraph 6 of the Report stated as below :

"6. The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge.

This Court has repeatedly pointed out that the mere fact that the appellate court is inclined on a reappreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous."

Keeping in view the above discussion and the settled law, I am of the affirm view that the learned trial Court has correctly appreciated the evidence on record and impugned judgment dated 13.03.2008 passed by the Court of learned Judicial Magistrate 1st

Class, Chandigarh, is liable to be upheld by this Court. The appeal filed by the appellant/complainant is, accordingly, dismissed.

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

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

In the end, I record my appreciation for Mr. H.S. Randhawa and Ms. Sheenu Sura, Advocate, learned Amicus Curiae, who had rendered able assistance to this Court.

14.03.2023
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(N.S.SHEKHAWAT)
JUDGE

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