

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

**CRM-A-779-MA of 2018
Date of decision: 18th July, 2023**

Sandeep Singh Tanwar

...Applicant

Versus

Naveen Nayyar

...Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Neeru Bansal, Advocate for the applicant.

AVNEESH JHINGAN, J (Oral):

1. The present application under Section 378(4) Cr.P.C. is filed aggrieved of acquittal of the respondent in a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

2. As per the case set up by the complainant, in September, 2014 the respondent borrowed Rs.12,50,000/- and for repayment issued three post-dated cheques bearing Nos. 762331 dated 10.2.20215 amounting to Rs.4,00,000/-; 762332 dated 10.3.2015 amounting to Rs.4,00,000/- and 762333 dated 28.3.2015 amounting to Rs.4,50,000/- drawn on Overseas Bank, Panchkula. On presentation, vide memo dated 10.4.2015 the cheques were dishonoured with the remarks "insufficient funds". Legal notice was sent through speed post on 11.4.2015. The complaint was dismissed on the ground that it was filed before the expiry of fifteen days of receipt of notice by the respondent.

3. Heard learned counsel for the applicant.

4. Proviso (c) to Section 138 of the Act is reproduced below:

“(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

5. Proviso to Section 138 of the Act provides that the Section shall not apply unless as per proviso (a) the cheque is presented to the bank within six months from the date it is drawn or within the period of its validity whichever is earlier. Under proviso (b), the holder has to issue notice within thirty days of the return of unpaid cheque. According to proviso (c), on failure of the drawer to pay the amount within fifteen days of the receipt of notice issued under proviso (b), the complaint under Section 138 of the Act shall lie.
6. It has been proved on record by the deposition of DW1 that notice was served upon the respondent on 20.4.2015 and the complaint was filed on 27.4.2015.
7. It would be important to note that the said facts are not being disputed before this court.
8. There is no factual or legal error much less perversity in the judgment of acquittal for interference by this court.
9. The application is dismissed.

18th July, 2023

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[AVNEESH JHINGAN]
JUDGE

1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No