

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

CRM-A-650 of 2020 (O&M)

Date of decision: 5th July, 2023

The Mansa Central Co-operative Bank Ltd.

...Applicant

Versus

Lachhman Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Arvinder Singh, Advocate for the applicant.

AVNEESH JHINGAN, J (Oral):

1. This application filed by the Mansa Central Cooperative Bank Ltd. (for short, 'the Bank') for grant of leave to appeal against the judgment of acquittal is accompanied by an application for condoning the delay of 23 days in filing thereof.

2. The dispute in the present case is relating to dishonouring of cheque of Rs.1,69,000/- for clearing the balance loan of Rs.60,000/-.

3. The brief facts are that the accused (respondent herein) availed housing loan of Rs.2,00,000/- on 24.11.2012. The loan was to be repaid in monthly installments. A cheque bearing NO. 355201 dated 12.9.2016 amounting to Rs.1,69,000/- was given by the respondent for clearing the loan. On presentation, the cheque was dishonoured vide memo dated 12.9.2016 with remarks "insufficient funds". A complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') was filed. Happy, the authorised representative of the Bank tendered his affidavit to support the complaint.

4. The accused in statement under Section 313 Cr.P.C. stated that the bank had obtained thumb impression on the blank cheque. The cheque book was with the bank. No notice was served upon him.

5. It was concluded that the complainant failed to prove its case. The authorised representative appearing on behalf of the Bank in cross-

examination stated that he had neither served the notice nor given the loan to the accused. Further, the original file was not produced. He admitted the fact that out of Rs.2,00,000/-, Rs.1,40,000/- were repaid by the accused.

6. Learned counsel for the applicant submits that the trial court erred in acquitting the accused. The presumption under Section 139 of the Act was not considered. It is further argued that it was not disputed that the cheque had thumb impression of the accused.

7. The operational part of the impugned judgment is reproduced below:

“7. I have heard the learned counsel for the complainant bank as well as ld. Defence counsel and have gone through the file very carefully. After hearing learned counsel for the parties and going through the statements of witnesses and documents on record, I am of the considered view that complainant has failed to prove its case against accused. Complainant in his cross-examination stated that he had not issued notice to accused Lachhman Singh. He even did not give loan to him. He has admitted that as per statement of account of Lachhman Singh he had taken loan of Rs.2 lakhs and repaid Rs.1,40,000/-. He has stated that the cheque was issued and bounced in their bank. In this case, nothing was written or happened in his presence. By resolution Mr. Virinder was authorized to contest the case under Section 138 of NI Act. He did not bring the original loan file. So complainant failed to prove its case. Hence, the present complaint is dismissed and accused is ordered to be acquitted of the notice served upon him. Bail bonds and surety bonds are not to be discharged till the expiry of period of appeal or revision, if any. File be consigned to the record room.”

8. Proviso (c) to Section 138 of the Act provides that Section 138 of the Act shall not apply unless the drawer of the cheque fails to make payment of amount to the payee within fifteen days of the receipt of the notice.

9. The authorised representative in his cross-examination

specifically stated that he had not issued the notice. Not only this, for the reasons best known, he had not produced the original record.

10. The contention that presumption under Section 139 of the Act was not considered lacks merit. The applicability of Section 138 of the Act would be on the failure of the drawer of the cheque to pay the amount within fifteen days of the receipt of the notice.

11. In **Dashrath Rupsingh Rathod v. State of Maharashtra and another**, Criminal Appeal No. 2287 of 2009, decided on 1.8.2014 the Supreme Court analysing Section 138 of the Act held:

“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]

12. The scope for interference in appeal against acquittal is well settled. A Division Bench of this Court in **State of Punjab v. Hansa Singh, 2001 (1) RCR (Criminal) 775**, while dealing with an appeal against acquittal, held:

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in Ashok Kumar v. State of Rajasthan, 1991(1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

13. The testimony of authorised representative of bank had not substantiated the complaint, he neither had personal knowledge of the facts nor produced the original file. There is no factual or legal error, much less perversity, in the impugned judgment. The view taken by the trial court is plausible one. No case is made out for interference in the judgment of acquittal.
14. The application for grant of leave to appeal is dismissed. Consequently the application for condonation of delay is also dismissed.

[AVNEESH JHINGAN]

JUDGE

5th July, 2023

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1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No