

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

CRA-AS-149-2023

Reserved on:10.04.2023.

Date of Decision: 20.04.2023.

AMIT KUMAR

.....APPELLANT

VERSUS

ISHWAR GARG

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Ms. Ambika, Advocate for
Mr. J.K. Goel, Advocate
for the appellant.

Mr. Munish Kumar Garg, Advocate
for the respondent.

VIKRAM AGGARWAL, J.

1. The present appeal assails the judgment dated 12.12.2013 vide which the complaint filed by the appellant-complainant under Section 138 of the Negotiable Instruments Act, 1881(for short the Act) was dismissed and the respondent-accused was acquitted.

2. The facts, in brief, are that the appellant-complainant was running a rice mill under the name and style of M/s S.R.L. Trading company, at Karnal. The same had been leased out to the respondent-accused for one paddy season commencing from 01.05.2009 to 31.03.2010 by way of a lease agreement dated 27.04.2009. Rs.3,00,000/- was to be paid as lease money. In discharge of his legal liability, the respondent-accused issued cheque No.22863 dated 15.02.2009 drawn at State Bank of Patiala, Karnal for a sum of Rs.1,50,000/-.It would be

essential to notice here that the number of cheque was subsequently changed in the complaint to 223862. The cheque was dishonoured vide memos dated 15.05.2009 and 29.10.2009. Statutory legal notice dated 11.11.2009 was issued calling upon the respondent-accused to make the payment of the cheque within a period of 15 days. Since the amount was not paid, the complaint was filed. After preliminary evidence, the respondent-accused was summoned. Notice of accusation was served on 12.07.2010. During the trial, the complainant appeared as CW-1 and examined three other witnesses apart from himself. All the relevant documents were also tendered into the evidence. Certain documents were produced by the respondent-accused in defence evidence.

After examining the matter and hearing both sides, the trial Court dismissed the complaint.

3. Aggrieved by the said decision, the present appeal was preferred.

4. I have heard learned counsel for the parties and I have also perused the record which was duly summoned.

5. Learned counsel for the appellant has submitted that the trial Court erred in dismissing the complaint. It has been submitted that inadvertently, initially in the complaint cheque bearing No.223863 was mentioned which was duly corrected to 223862. It has been submitted that in the other documents and the evidence, inadvertently cheque No.223863 was referred to instead of 223862. Learned counsel has submitted that the cheque which was tendered in evidence was bearing No.223862 and therefore the trial Court erred in not examining the matter from the correct perspective and simply dismissed the complaint on technical grounds.

6. On the other hand learned counsel for the respondent has submitted that there is no illegality in the decision of the trial Court as even in the legal notice which was issued, the cheque number which was mentioned was 223863 and not

223862 and therefore, the requirements of Section 138 of the Act were not complied with. It has been argued that under the circumstances, the trial Court rightly dismissed the complaint and acquitted the respondent-accused. In support of his contentions learned counsel has placed reliance upon the judgment of this Court in the case of *Chhabra Fabrics Private Limited VS BhagwanDass, Proprietor of Dhingra Handicrafts 2014(4) R.C.R. (Criminal) 814.*

7. I have given my thoughtful consideration to the arguments addressed by learned counsel for the parties. No doubt, the cheque which was tendered in evidence that is EX-C1 was cheque No.223862. However, this alone would not be sufficient. In the complaint, the cheque number was corrected from 223863 to 223862. At what stage this was done is not known. A similar correction was made in the affidavit accompanying the complaint also. Had these been the only two documents, there would have been no problem. However, apart from this, when the appellant-complainant himself appeared in the witness box as CW-1, he mentioned cheque No.223863 in his affidavit which was tendered in the examination in chief. In the cross-examination also, he only stated about cheque No.223863 and 223864. There was no mention of cheque No.223862. It can, therefore, very well be presumed that till this time, there was no correction made in the complaint or at least the complainant was not aware of which cheque he was talking about. Not only this, even the legal notice EX.C-4 which was served upon the respondent-accused referred to cheque No.223863. Once the legal notice calling upon the respondent-accused mentioned cheque No.223863, then the failure of the respondent-accused to pay the amount in pursuance to the legal notice within a period of 15 days would not attract the provisions of Section 138 of the Act and, the complaint itself would not be maintainable. It essentially means that the appellant-complainant had not complied with the mandatory provisions of Section 138 of the Act which is a sine qua non for the filing of a complaint under Section

138 of the Act. The trial Court, therefore, did not commit any illegality in dismissing the complaint. The complainant, being the dominus litus of the case instituted by him was supposed to be careful. In the case of Chabbra Fabrics Private Limited VS BhagwanDass, Proprietor of Dhingra Handicrafts, a co-ordinate bench of this Court upheld an acquittal under Section 138 of the Act on the ground that incorrect cheque number was mentioned in the legal notice. It was observed that it may have been a typographical error but such typographical error, if any, would have the effect of a non-compliance of the mandatory provisions of Section 138 of the Act. It was held that the complaint was, therefore, not maintainable. I am in agreement with the view taken by the co-ordinate bench of this Court in the aforementioned case as for invoking Section 138 of the Act, all ingredients have to be fulfilled. The trial Court, therefore, did not commit any error in dismissing the complaint and acquitting the respondent-accused.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is hereby dismissed.

20.04.2023
Himanshu

(VIKRAM AGGARWAL)
JUDGE

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