



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRA-S-1435-SB-2002 (O&M)  
Date of Decision: 07.05.2024

M/s Khera Trading Co.

...Appellant

Vs.

M/s Guru Nanak Rice Mills

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. G.S. Kaura, Advocate  
for the appellant.

\*\*\*\*\*

HARPREET SINGH BRAR, J. (ORAL)

1. This instant appeal has been preferred by the appellant-complainant against the judgment of acquittal dated 12.07.2001 passed by learned Additional Sessions Judge, Gurdaspur in Criminal Appeal No.37 of 1999, vide which the judgment of conviction and order of sentence dated 17.11.1999 passed by learned Judicial Magistrate Ist Class, Batala in Complaint Case No.215/1 of 05.10.1995 filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act'), was set aside.



2. Succinctly, the facts are that the respondent-firm through its sole proprietor Lakhbir Singh, issued two cheques bearing No.2188820 dated 25.05.1995 and 2188821 dated 25.06.1995, respectively, in favour of the appellant-firm for a sum of Rs.75,000/- each drawn on J & K Bank Ltd., Batala in order to discharge a legal liability towards the payment of paddy purchased by the respondent from the appellant-firm. Upon presentation of the said cheques for encashment, the same were dishonoured and returned vide memo dated 11.09.1995 on account of insufficiency of funds. Then, a legal notice was served by the appellant on 16.09.1995 upon the respondent demanding payment of the said cheques amount, but the respondent failed to make such payment. The said notice was received undelivered with remarks '*addressee has refused to receive the registered letter*'. Thereupon, the complaint (*supra*) was filed by the appellant against the respondent-firm. Consequently, a trial ensued and sole proprietor of the respondent-firm i.e. Lakhbir Singh was convicted and sentenced by learned trial Court to undergo rigorous imprisonment for one year along with a fine of Rs.5,000/- and in case of default of payment of fine, further rigorous imprisonment for three months. Aggrieved, the respondent-accused preferred an appeal against the said judgment of conviction, which was allowed by learned lower Appellate Court and consequently, the conviction and sentence of the



respondent was set aside, thereby, acquitting him. Aggrieved by the same, the appellant-complainant has preferred the present appeal.

3. Learned counsel for the appellant, *inter alia*, contends that the learned lower Appellate Court has ignored the factual as well as the legal position, while acquitting the respondent on the ground that stipulated period of 15 days from the date of receipt of legal notice was not afforded to him before filing the complaint under Section 138 of N.I. Act as the registered notice was issued on 16.09.1995 and returned on 20.09.1995, whereas the complaint was rightly filed on 05.10.1995, i.e., after 15 days. He further submits that the cause of action arose, when the cheques in question were dishonoured and returned and the stipulated period of 15 days is to just give the accused another opportunity to right his wrong and escape punishment. It is further contended that even on merits, there is ample evidence on record to establish the guilt of the respondent, as he has duly admitted his signatures upon the cheques in question.

4. I have heard learned counsel for the appellant and perused the paper-book with his able assistance. It transpires that the legal notice (Ex.P5 & P6) were issued by the appellant-complainant on 16.09.1995 and the same were returned bearing endorsement of the postal authority stating 20.09.1995 as the date of refusal by the accused to receive the said notice, which admittedly, is the date of service of the said notice upon the



respondent-accused. Taking that into consideration, 15<sup>th</sup> day from the date of receipt of demand notice by the respondent fell on 05.10.1995. In the case at hand, the complaint under Section 138 of N.I. Act was instituted by the appellant-complainant on 05.10.1995 and cognizance of the same was taken by learned Magistrate on the same day since he applied his mind and passed an order directing the said complaint to be registered and come up on 27.10.1995 for evidence of the complainant. Now, the contention that needs be dealt with is whether complete 15 days were afforded to the respondent by the appellant from the date of receipt of the demand notice before instituting the complaint.

5. It is pertinent to note here that the proviso to Section 138 of N.I. Act stipulates three conditions that must be satisfied before the dishonour of a cheque may be held to constitute an offence under the said section: i.e. (i) cheque is presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier; (ii) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within thirty days of the receipt of 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, as the case may**



be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice. When all the aforesaid conditions are fulfilled, only then an offence can be said to have been committed under Section 138 of N.I. Act.

6. Under the provisions outlined in Section 142 of N.I. Act regarding the cognizance of offence, no Court may find that an offence punishable under Section 138 of N.I. Act has occurred unless the payee, or the holder of the cheque, files a written complaint within a month of the date, on which the cause of action under clause (c) of the proviso to Section 138 of N.I. Act arises. When the aforementioned clauses are read collectively, it becomes clear that a complaint under Section 138 of N.I. Act may be filed within one month of the date, on which the cause of action arises, that is, as soon as the drawer of the cheque fails to make payment of the cheque amount to the payee or to the holder within fifteen days of the receipt of the notice required to be sent in terms of clause (b) of the proviso to Section 138 of N.I. Act.

7. Furthermore, the cause of action begins on the date, the drawer receives the demand notice, not the day on which it is served. The Hon'ble Supreme Court has addressed this matter in two instances: ***K. Bhaskaran Vs. Sankaran, (1999) 7 SCC 510***, and ***Dalmia Cement (Bharat) Ltd. Vs. M/s. Galaxy Traders, AIR 2001 S SC 676***. In both cases, the Court



determined that in order for an offence under section 138 of N.I. Act to be proven, the complainant must show that all necessary elements were present, including the receipt of notice by the accused under Clause (b). The offence is not committed by the mere "giving" of the notice but on the date of receipt of the notice by the drawer. In a similar vein, the Honourable Supreme Court held in *State of M. P. Vs. Hira Lal, (1996) 7 SCC 523* and *Jagdish Singh Vs. Nathu Singh, AIR 1992 SC 1604* that it must be presumed that the notices have been served on the addressee, if they are returned with postal remarks such as "refused," "not available in the house," "house locked," and "shop closed."

8. Now that the essential ingredients have been discussed, the issue that remains is whether a complaint under Section 138 of N.I. Act can be filed before the expiry of the stipulated period of 15 days from the date of receipt of notice by the drawer of the cheque as per clause (c) of Section 138. This has been answered in negative by a three-Judge Bench of the Hon'ble Supreme Court in *Yogendra Pratap Singh Vs. Savitri Pandey and another, 2014(4) R.C.R.(Criminal) 321*, wherein, the Hon'ble Supreme Court, while speaking through Justice R.M. Lodha made the following observations: -

*“35. Insofar as the present reference is concerned, the debate broadly centers around clause (c) of the proviso to Section 138*



*of the NI Act. The requirement of clause (c) of the proviso is that the drawer of the cheque must have failed to make the payment of the cheque amount to the payee within 15 days of the receipt of the notice. Clause (c) of the proviso offers a total period of 15 days to the drawer from the date of receipt of the notice to make payment of the cheque amount on its dishonour.*

*36. Can an offence under Section 138 of the NI Act be said to have been committed when the period provided in clause (c) of the proviso has not expired? Section 2(d) of the Code defines 'complaint'. According to this definition, complaint means any allegation made orally or in writing to a Magistrate with a view to taking his action against a person who has committed an offence. Commission of an offence is a sine qua non for filing a complaint and for taking cognizance of such offence. A bare reading of the provision contained in clause (c) of the proviso makes it clear that no complaint can be filed for an offence under Section 138 of the NI Act unless the period of 15 days has elapsed. Any complaint before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint at all in the eye of law. It is not the question of prematurity of the complaint where it is filed before expiry of 15 days from the date on which notice has been served on him, it is no complaint at all under law. As a matter of fact, Section 142 of the NI Act, inter alia, creates a legal bar on the Court from taking cognizance of an offence under Section 138 except upon a written complaint. Since a complaint filed under Section 138 of the NI Act before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint in the eye of law, obviously, no cognizance of an offence can be taken on the basis of such complaint. Merely because at the time of taking cognizance by the Court, the period of 15 days has expired from the date on which notice has been served on the drawer/accused, the Court is not clothed with the jurisdiction to take cognizance of an offence under Section 138 on a*

2024:PHHC:070074



*complaint filed before the expiry of 15 days from the date of receipt of notice by the drawer of the cheque.*

*37. A complaint filed before expiry of 15 days from the date on which notice has been served on drawer/accused cannot be said to disclose the cause of action in terms of clause (c) of the proviso to Section 138 and upon such complaint which does not disclose the cause of action the Court is not competent to take cognizance. A conjoint reading of Section 138, which defines as to when and under what circumstances an offence can be said to have been committed, with Section 142(b) of the NI Act, that reiterates the position of the point of time when the cause of action has arisen, leaves no manner of doubt that no offence can be said to have been committed unless and until the period of 15 days, as prescribed under clause (c) of the proviso to Section 138, has, in fact, elapsed. Therefore, a Court is barred in law from taking cognizance of such complaint. It is not open to the Court to take cognizance of such a complaint merely because on the date of consideration or taking cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer/accused has elapsed. We have no doubt that all the five essential features of Section 138 of the NI Act, as noted in the judgment of this Court in *M/s. Kusum Ingots & Alloys Ltd. v. M/s. Pennar Peterson Securities Ltd. and ors. etc. etc.*, AIR 2000 Supreme Court 954 : (2000) 2 SCC 745 and which we have approved, must be satisfied for a complaint to be filed under Section 138. If the period prescribed in clause (c) of the proviso to Section 138 has not expired, there is no commission of an offence nor accrual of cause of action for filing of complaint under Section 138 of the NI Act.*

*38. We, therefore, do not approve the view taken by this Court in *Narsingh Das Tapadia v. Goverdhan Das Partani and Anr.*, (2000) 7 SCC 183 and so also the judgments of various High Courts following *Narsingh Das Tapadia v. Goverdhan Das**

2024:PHHC:070074



*Partani and Anr., (2000) 7 SCC 183 that if the complaint under Section 138 is filed before expiry of 15 days from the date on which notice has been served on the drawer/accused the same is premature and if on the date of taking cognizance a period of 15 days from the date of service of notice on the drawer/accused has expired, such complaint was legally maintainable and, hence, the same is overruled.*

*39. Rather, the view taken by this Court in Sarav Investment & Financial Consultancy Private Limited and Anr. v. Llyods Register of Shipping Indian Office Staff Provident Fund and Anr., (2007) 14 SCC 753 wherein this Court held that service of notice in terms of Section 138 proviso (b) of the NI Act was a part of the cause of action for lodging the complaint and communication to the accused about the fact of dishonouring of the cheque and calling upon to pay the amount within 15 days was imperative in character, commends itself to us. As noticed by us earlier, no complaint can be maintained against the drawer of the cheque before the expiry of 15 days from the date of receipt of notice because the drawer/accused cannot be said to have committed any offence until then. We approve the decision of this Court in Sarav Investment & Financial Consultancy Private Limited and Anr. v. Llyods Register of Shipping Indian Office Staff Provident Fund and Anr., (2007) 14 SCC 753 and also the judgments of the High Courts which have taken the view following this judgment that the complaint under Section 138 of the NI Act filed before the expiry of 15 days of service of notice could not be treated as a complaint in the eye of law and criminal proceedings initiated on such complaint are liable to be quashed.”*

9. The question of computation of 15 days limitation period has been dealt by Kerala High Court in the case of **Poornasree Agencies Vs.**

2024:PHHC:070074



***Universal Enterprises, 1995 (2) RCR (CrL) 10***, wherein following was observed:

*“6. The period of limitation as defined under (j) Section 2 of the Limitation Act "means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act". But then in view of the special provisions in the Negotiable Instruments Act, the period prescribed there alone can be taken into account for the purpose of limitation and that is, that a complaint has to be filed within one month of the date when the cause of action had accrued. As stated already, petitioner had received the notice on 9.6.1993. That date has to be excluded and payment has to be made within 15 days from 10.6.1993 and that would expire on 24.6.1993. A complaint for an offence under Section 138 of the Negotiable Instruments Act can be made within one month of the date on which the cause of action had arisen. Obviously, it had started from 25.6.1993 and therefore the complaint ought to have been filed before 24.7.1993, which alone would have been within the time. The contention that applying the corresponding "date rule" complaint need have been filed only on 25.7.1993, which was however a holiday, and it having been filed on 26.7.1993 was in time, is unacceptable.”*

10. In the case at hand, the demand notice is deemed to have been served upon the respondent on 20.09.1995 and therefore, the period of 15 days expired at the end of 05.10.1995. However, the complaint was filed by



the appellant on 05.10.1995 and the cognizance by the learned Magistrate was taken on the same day, whereas the complaint should have been instituted on or after 06.10.1995 in view of the settled law. Hence, this Court is of the opinion that the judgment under challenge has been passed in accordance with the law and warrants no interference by this Court.

11. Furthermore, the power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (*See H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram Vs. State of H.P., 1973 (2) SCC 808 and Chandrappa and others Vs. State of Karnataka, (2007) 4 SCC 415*). A Division Bench of this Court in the judgment passed in *State of Haryana Vs. Ankit and others*, CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.



12. A two Judge Bench of Hon'ble Supreme Court in case of **Chandrappa**'s case (supra) has laid down the parameters with regard to the power of the appellate Court, while dealing with an appeal against an order of acquittal. Speaking through Justice C.K. Thakker, the following was held:

*"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;*

*(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;*

*(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;*

*(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.*

*(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*



*(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

13. In view of the above discussion, this Court finds that learned counsel for the appellant has been unable to point out any perversity in the impugned judgment of acquittal dated 12.07.2001 passed by learned Additional Sessions Judge, Gurdaspur. Therefore, no interference is warranted by this Court in the findings recorded by learned lower appellate Court.

14. Hence, present appeal stands dismissed being devoid of merits.

15. All the pending miscellaneous application(s), if any, shall also stand disposed of.

**[ HARPREET SINGH BRAR ]**  
**JUDGE**

07.05.2024  
*vishnu*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No