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

CRA-S-752-SBA-2005
Date of Decision: 22.05.2025

Balwinder Singh ...Appellant

Versus

M/s Darshan Tractor Co. and another …Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. S.S. Tiwana, Advocate
for the appellant.

Mr. Liaqat Ali, Advocate
for the respondent.

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ANOOP CHITKARA, J.

Criminal Case No.	14/2 of 7.4.1998
Decided on	17.01.2005

1. Aggrieved by dismissal of above captioned complaint and acquittal of respondent by trial Court, filed for dis-honour of cheque amounting to Rs.1,50,000/- dated 13.12.1997, the complainant had come up before this Court in 2005 seeking leave to appeal.

2. Vide order dated 29.03.2005, a Division Bench of this Court had granted leave to appeal and admitted the appeal. Finally, today the Court got the time and zeal to take up the matter and even the counsel were available for arguments. Infact, the counsel were extremely eager to argue the matter.

3. Appellant had filed a complaint against accused No.1 M/s Darshan Tractor through accused No.2- Darshan Singh, Proprietor. Allegations were that accused No.2 on behalf of accused No.1 issued cheque no.632333 dated 13.12.1997 for an amount of Rs.1,50,000/- drawn on State Bank of Patiala, Branch Sahnewal, Ludhiana to discharge liability of debt. Accused No.2 had assured the complainant that the cheque will not bounce, if presented and has sufficient funds. The complainant accepted the payment through cheque and presented the same for encashment in Ludhiana Cooperative Bank, however the cheque was returned with remarks "insufficient funds" and memo in this regard was received by the complainant on 27.02.1998 (Ex.P3).

4. After that the complainant sent registered letter dated 12.03.1998 upon the accused calling him to pay Rs.1,50,000/- within 15 days from the receipt of memo. However, neither the accused sent reply to the letter nor did pay the money. Thus, committed an offence punishable under Section 138 of NI Act because he failed to discharge the existing liability.

5. Before summoning accused, the complainant led his preliminary evidence and appeared as PW1. He also produced K.K. Sharma, Clerk-cum-Cashier, State Bank of Patiala as PW2 and Kuldip Singh, Branch Manager as PW3. On having been satisfied with the prima facie evidence, the trial Court took cognizance of the matter and summoned the accused. Notice of acquisition was issued to which they did not plead guilty and claimed trial.

6. In the trial, complainant appeared as PW1, Joginder Mehta, Branch Manager as PW2, K.K. Modgil, Computer Operator State Bank of Patiala as PW3 and Major Singh as PW4. After closure of complainant evidence, incriminating evidence was put to the respondent under Section 313 CrPC to which he denied all the allegations and pleaded false implication.

7. The trial Court evaluated and analyzed the evidence and did not find the allegations convincing and dismissed the complaint on technical ground that notice was not served within 15 days as was mandated by the statute i.e. NI Act.

8. I have heard counsel for the parties and have gone through the record and its analysis would lead to the following outcome.

9. Since the complaint was dismissed only on technical ground and not on merits, as such this Court is only confining the reasoning on notice.

10. Section 138 of NI Act as on 27.02.1998 reads as follows:

> *"138. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:*

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been 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;

(b) 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 fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(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.

Explanation.- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

11. The cheque was tendered in evidence as Ex.P1 and it bears the date of 13.12.1997 and was put after striking of 15.12.1997, however there is some initials on the date 13.12.1997 which was payable to appellant herein and was drawn for Rs.1,50,000/-. The back side of the cheque bears the stamp of the Bank. Ex.P3 is memo dated 27.02.1998 which shows that the cheque was returned due to insufficient funds in the account.

12. After that vide registered AD notice dated 12.03.1998 Ex.P4, the complainant demanded the amount in terms of Section 138 of NI Act. Notice was sent through counsel.

13. Major Singh appeared as PW4 and he tendered in evidence Ex.PW4/A and also Ex.PW4/C. These exhibits are the most material to decide the present appeal. It is for the reason that the complainant had issued notice Ex.P4 on 12.03.1998 based on the memo of return issued by the Bank on 27.02.1998 within 14 days of its return. The statutory period for issuance of notice is 15 days. In any case, the return is taken as Ex.P3 bearing 27.02.1998, then the complaint was within limitation.

14. However, the stand of the accused is that memo Ex.P3 was forged and is unsigned. The cheque had already been dishonoured on 13.02.1998 as was visible from Ex.PW4/A. I have gone through the memo Ex.P3 dated 27.02.1998 which is unsigned. I have also gone through Ex.PW4/A which has been signed by Manager/Accountant dated 13.02.1998. Further in addition to that, Ex.P6 is another memo dated 19.02.1998 vide which cheque was returned. Ex.P6 is the most significant. It is for the reason that it bears not only signatures of the Manager but also mentions further details. Thus, limitation had

to start from 19.02.1998. Even if 19.02.1998 is excluded, from 20.02.1998 then February being a leap year, the limitation would end on 06.03.1998. Legal notice Ex.P4 was sent on 12.03.1998 as is apparent from the date of notice. Postal receipt Ex.P5 also depicts 12.03.1998.

15. There was a statutory requirement of sending notice within 15 days of dishonour of cheque. In the present case, the stand of the complainant is that another memo Ex.P3 was given which is dated 27.02.1998 but the said memo has no signatures. This is further contradicted by memo Ex.PW4/A and Ex.P6 which are duly signed. Thus, on the face of it, it appears that the complainant had attached unsigned memo dated 27.02.1998 to bring the legal notice within the statutory limitation of 15 days whereas infact notice was issued to him vide memo Ex.PW4/A which informed the complainant about dishonour of cheque dated 13.02.1998 and was conveyed to the complainant on 19.02.1998 as is apparent from Ex.P6.

16. The trial Court rightly dismissed the complaint in violation of statutory requirements. Once the statue has prescribed a limitation of 15 days for sending legal notice demanding the cheque amount, then such limitation cannot be extended by holder of the cheque.

17. The notice itself was barred by limitation, as such no legal notice was sent which was mandatory requirement of Section 138 of NI Act.

18. Resultantly, there is no merit in the present appeal and the same is accordingly, dismissed. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

22.05.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: YES.