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

CRM-A- 1144-MA-2014
RESERVED ON: 01.04.2025
PRONOUNCED ON: 20.5.2025

HARI BHAGWAN ………...APPLICANT/APPELLANT

VERSUS

KULBIR SINGH ……..RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Lovepreet Singh, Advocate for
Mr. Abhishek Khullar, Advocate
for the applicant/appellant.

Mr. Yogesh Goel, Advocate
Mr. Rushit Goel, Advocate and
Mr. Aniket Goel, Advocate for the respondent.

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SANDEEP MOUDGIL, J

1. Learned counsel for the appellant by filing the present appeal, under Section 378(4) Cr.P.C, has assailed the judgment dated 04.10.2012, passed by the Judicial Magistrate Ist Class, Ludhiana, dismissing the complaint and acquitting the respondent-accused therein of the charges framed against him under Section 138 of the Negotiable Instruments Act (for short ' the Act').

2. Factual Matrix of the case leading to the filing of present petition unfolds as that the complainant/appellant had friendly relation with each other on that account accused/respondent obtained a loan of Rs.2,00,000/- in the year 2006. In order to discharge his liability, the accused issued a cheque bearing No.118818 dated 18.08.2009 in favour of complainant. On presentation of the said cheque for encashment, the same got dishonoured with the remarks "return payment stopped by drawer" vide memo dated 29.08.2009. Thereafter, the

accused was served upon legal notice dated 18.09.2009 to make the payment but he defaulted and therefore this present complaint was filed.

3. It is contended that the judgment passed by the trial Court suffers from grave illegality, perversity and the same is based upon surmises and conjectures and as such the same is liable to be set aside. It is further contended that the trial Court gave the benefit of acquittal to the respondent-accused only the ground that the cheque was given against a time barred debt which is not legally recoverable. Such an erroneous finding deserves to be set aside as the trial Court has utterly failed to appreciate the well proven oral as well documentary evidence of the complainant. It is further contended that the learned trial Court failed to appreciate that the respondent-accused has himself admitted his signature on the impugned cheque. It is well settled position in law that once an accused admits his signatures on the cheque, then, it can legally be presumed that the cheque has been issued in discharge of a legally enforceable debt. The presumption under Section 139 of the N.I. Act, 1881 in the present case is very strong in favour of the applicant-appellant, but in spite of that, the trial Court returned a finding of acquittal while dismissing the complaint in question. Despite being a fully proven case, the trial Court has wrongly and illegally acquitted the accused. Hence, the impugned judgment dated 04.10.2012 is liable to be set aside.

4. I have heard learned counsel for the applicant/appellant and gone through the record.

5. From the submissions made by the counsel for the appellant this court can gather that he is impugning the judgement only on one ground i.e in case a cheque is issued for a time barred debt and it is dishonoured, can the accused get acquittal on the ground that the debt was not legally recoverable.

6. It is clear from Section 138 of the Negotiable Instruments Act that in order to attract the penal provisions in the bouncing of a cheque in Chapter XVII, it is essential that the dishonoured cheque should have been issued in discharge, wholly or in part, or any debt or other liability of the drawer to the payee. The explanation to Section 138 defines the expression debt or other liability as a legally enforceable debt or other liability.

7. In a decision reported in the case of Sasseriyil Joseph vs Devassi 2001 Crl. LJ 24 of Kerala High Court dated 22.9.2000, court held that, section 138 NIA is attracted only if the cheque is issued for the discharge of a legally enforceable debt or other liability. In this case, admittedly, the cheque in question was issued in discharge of time barred debt. It cannot be said that a time barred debt is a legally enforceable debt.

8. In another case of ***Girdhari Lal Rathi v. P.T.V. Ramanujachari [1997 (2) Crimes 658]*** the Andhra Pradesh High Court clearly held that if a cheque is issued for a time barred debt and it is dishonoured, the accused cannot be convicted under section 138 of the N.I. Act, simply on the ground that the debt is not legally recoverable.

9. In the above said decisions Hon'ble court stated that the time barred debt is not legally enforceable debt and thus the same cannot fall within the ambit of legally enforceable debt under section 138 of the NIA. If even we assume that the debt is recoverable by taking a shelter of section 18 of limitation act, the same needs to be acknowledged afresh before expiry of its limitation period which in present case is admittedly not done.

10. As according to the version of the complainant a friendly loan was advanced to the accused in February 2006 and cheque was issued on 18.08.2009 for 2 lacs. Further the petitioner opted to remain silent for a span of more than

three and half year. Therefore in this case before expiry of the limitation there was no execution of document or acknowledgement of the said loan payment. After expiry of 3 years cheque was issued which has has become time barred debt which is not recoverable under section 138 NIA.

11. It is a settled law as held in "***C.Antony v. K.G.Raghavan Nair, 2002 (4) RCR (Criminal) 750"*** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

12. On perusal of the judgment passed by the trial Court dated 04.10.2014, this Court is of the considered view that the said judgment is based upon the proper appreciation of the evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, requiring any interference by this Court.

13. Accordingly, the leave to appeal stands declined.

14. Dismissed.

(SANDEEP MOUDGIL)
JUDGE

20.05.2025
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Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No