



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

120

**CRM-A-1546-MA-2014
DATE OF DECISION: 24.04.2025**

M/S KOHINOOR INIA (P) LTD

.....APPELLANT/APPLICANT

Versus

RAGHUBIR SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. S.K.Bawa, Advocate for the
applicant- appellant.

Mr. A.S.Sidhu, Advocate for
Mr. SPS Sidhu, Advocate
for the respondent.

SANDEEP MOUDGIL, J

1. By filing the present appeal, under Section 378(4) Cr.P.C., the appellant has assailed the judgment dated 19.07.2014, passed by the Judicial Magistrate Ist Class, Jalandhar, dismissing the complaint and acquitting the respondent-accused therein of the notice of accusation served upon him under Section 138 of the Negotiable Instruments Act (for short 'the Act').

2. Factual matrix of the case unfolds as appellant is a private limited company and doing the business of rubber products and was having business dealings with the Respondent. The respondent in order to clear the outstanding amount against him, issued a cheque bearing no. 021332 dated 25.09.2008 of Rs. 94,448/- drawn at Bank of India, Khanna branch in favour of the appellant

company with an assurance that the cheque would meet requirement whenever it will be resulted for encashment but when the cheque was presented for the encashment, it was dishonoured with a remark “payment stopped by the drawer” and in this regard, intimation was received by the appellant on 06.10.2008 and accordingly a legal notice dated 04.11.2008 was served upon the respondent through registered post in compliance of provision of Negotiable Instruments Act, 1881 and when the payment was not paid within a stipulated period of 15 days after the receipt of notice, the complaint was filed under section 138 of the Negotiable Instruments Act 1881 which has been dismissed by the trial court. Hence, the present appeal.

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 has relied upon the reply to the legal notice dated 26.11.2008 and report dated 18.11.2010 submitted by the respondent but the report dated 18.11.2010 has been negated by the trial court.

4. Counsel for the appellant vehemently contends that the trial court while dismissing the complaint has erred in relying upon the reply to the legal notice wherein it has been stated that material supplied was of sub standard quality thus the payment of the cheque was stopped. It is further argued that the learned trial Court failed to appreciate the report dated 18.11.2010 wherein it has been stated that material supplied to the respondent vide invoice no. 45 dated 15.07.2008 and invoice no. 53 dated 23.07.2008 which was found to be defective and the same was returned to the appellant company on 30.08.2008 wherein there is no evidence on record that material supplied on 15.07.2008 and 23.07.2008 was defective one and the report is on dated 18.11.2010 i.e

after more than two years raises suspicion on the credibility of the truthfulness of the respondent. The presumption under Section 139 of the N.I. At, 1881 in the present case is very strong in favour of the applicant-appellant, but inspite 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 respondent. Hence, the impugned judgment dated 19.07.2014 is liable to be set aside.

5. Heard.

6. I have perused the impugned judgment carefully and have also meticulously gone into the findings recorded by the trial Court. Upon perusal of the same, I do not find any perversity or illegality therein.

7. In the instant case, from the perusal of the judgment of the trial court, it is crystal clear that the complainant-appellant got the intimation regarding the dishonour of cheque on 06.10.2008 which Ex. C4 but this argument of the complainant-appellant becomes doubtful from the fact that he has specifically mentioned the fact that intimation regarding the dishonour of the cheque was received by the complainant-appellant on 03.10.2008 only. Thus, it is clear that the complainant-appellant has send the legal notice to the accused-respondent after an expiry of one day which is to be mandatorily send within 30 days.

The Allahabad High Court in “ ***Kapil Dev Tiwari Vs State of U.P, 2013(3) BC 587***” has held that “*proviso added to section 138 of the Negotiable Instruments Act 1881 makes it mandatory that 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 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid”.

8. Further, it has been successfully proven on record by the accused-respondent the fact that at the time of presentation of cheque, there were sufficient funds in his account and he has only got the payment of cheque in question stopped due to the reason that goods in respect of which it was issued were defective one, thus the ingredients of section 138 of the Negotiable Instruments Act 1881 does not stand fulfilled. In ratio of the case titled ***“Kapil Mehra Vs Sanjeev Jain, 1994 (2) Civil Court Cases 710 (P & H)”*** this court held that *“ where accused has proved on record the fact that he was having sufficient funds in his account at the time of presentation of cheque in question, but he has got the payment of the cheque stopped due to the reason that the goods supplied by the complainant were defective or there was shortage in supply, thus offence under section 138 is not made out”.*

9. In the light of above discussion, it is evident that the appellant has failed to prove the necessary ingredients to bring home guilt of respondent under Section 138 of the Negotiable Instruments Act, 1881. The respondent has successfully rebutted the presumption under Section 139 of the Negotiable Instruments Act, 1881 and as such the judgment of acquittal has been rightly passed by the learned Court below.

10. It is a cardinal principle of criminal jurisdiction that the prosecution has to stand on its own legs to establish the guilt of the accused beyond the shadow of reasonable doubt. Prosecution can, in no ways, take the benefits from the defence version. Thus in the light of this principle, it is clear that the story putforth by the appellant is surrounded with doubts and suspicions, thus on the basis of mere fact hat the respondent has admitted the

issuance of cheque, he cannot be held guilty for its dishonour without the proof of any alleged legal liability, in discharge of which it might have been issued.

11. On perusal of the judgment passed by the trial Court dated 31.05.2016, this Court is of the considered view that the said judgment is well reasoned and is based upon proper appreciation of evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, contrary to law or requiring any interference by this Court. The accused-respondent has been duly able to rebut the presumption under Section 139 of the N.I. Act, 1881 and as such, he has rightly been acquitted of the notice of accusation served upon him.

12. Accordingly, the leave to appeal stands dismissed.

24.04.2025

Poonam Negi

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

(SANDEEP MOUDGIL)
JUDGE