2025:PHHC:066126

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A 1636-MA of 2014 (O&M)
Date of Decision: 14.05.2025

Shyam Lal @ Shuyam Sunder ...Applicant

Versus

Darshan Singh ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Kulwant Singh Dhanora, Advocate, for the applicant.

Mr. Nishan Iindal, Advocate, for the respondent.

N.S.SHEKHAWAT, J.

1. The petitioner has filed the present application under Section 378(4) Cr.P.C. with a prayer to grant special leave to appeal against the impugned judgment dated 10.06.2014 passed by the Court of Judicial Magistrate 1st Class, Kurukshetra, whereby, the respondent was acquitted of the notice of accusation under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act'**)

2. The applicant/complainant had filed a complaint in the present case under Section 138 of the Act against the respondent/accused with the allegations that the respondent had borrowed a sum of Rs. 02 lakhs from him and in lieu of the said

repayment, he had issued a cheque No. 228982 dated 08.10.2004 drawn on State Bank of India in favour of the applicant/complainant for discharge of his lawful liability. After the presentation of the cheque by the applicant/complainant in his account on 08.10.2004, the cheque was dishonoured on the same date and was returned to the applicant/complainant with the endorsement "account closed" on 20.03.2004. Thus, the cheque in question remained unpaid. After the receipt of the cheque, the applicant/complainant issued a statutory notice dated 09.10.2004 to the respondent/accused under the registered AD cover, but the respondent/accused intentionally did not receive the notice and the same was received back by the applicant/complainant. Thus, the respondent/accused had committed the offence, making him liable for punishment under Section 138/142 of the Act. With these broad allegations, the complaint was filed by the applicant/complainant.

3. On finding a *prima facie* case against the respondent/accused, a notice of accusation under Section 138 of the Act was served upon him, to which, he pleaded not guilty and claimed trial.

4. In the evidence, the complainant examined himself as CWI and after exhibiting certain documents, the evidence was closed.

The statement of the respondent/accused was recorded under Section 313 Cr.P.C., wherein, he pleaded his false implication and claimed innocence.

5. In defence, Surinder Kumar appeared as DW1, whereas Karamjeet as DW2 and Sumit Arora as DW3 and affidavit Ex.DW3/A, report Ex.DW3/B and photo charts Ex.DW3/C to Ex.DW3/F were placed on record.

6. After holding the trial, vide the impugned judgment dated 10.06.2014, the Court of Judicial Magistrate, Kurukshetra held that the applicant/complainant had failed to prove the ingredients of the offence under Section 138 of the Act and the respondent/accused was ordered to be acquitted of the offence.

7. Learned counsel for the applicant/complainant has vehemently argued that in the present case the cheque Ex.C1 was issued by the respondent/accused in discharge of his legally enforceable liability and the cheque was presented on the assurance that on presentation, it would be honoured. However, the trial Court had adopted a hyper-technical approach and wrongly acquitted the respondent/accused on the ground that no date had been mentioned on the memo Ex.C-2 vide which the bank had returned the cheque and the date mentioned on legal notice could not be treated as gospel truth. Learned counsel further submits that in case there was any doubt with regard to the date of return of cheque vide Ex.C-2, the trial

Court could have summoned some bank officials and the applicant/complainant could not made to suffer on account of a fault on the part of the bank officials. The trial Court has failed to appreciate that the cheque was filled in by the respondent in his own hand writing and the ingredients of the offence were complete in all respects.

8. I have heard the learned counsel for the parties and perused the record carefully.

9. While discussing the scope of interference by the Appellate Court, while dealing with the judgment of acquittal, the Hon'ble Supreme Court held in the matter of ***Bhaskar Rao and others Vs. State of Maharashtra AIR 2018 SC 2222:2018 (5) RCR (Criminal 288)*** as follows:-

> *"14. As the trial Court and High Court, having appreciated the evidence on record has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this Court as expressed in* ***Tota Singh and Anr. Vs. State of Punjab, 1987 (2) RCR (Criminal) 35:1987 CriLJ 974.***
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> *The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW-2 and PW-6 were either unreasonable or perverse. What the High Court has*

done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such re-appreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such, which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse: Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

10. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62: 1996 CrilJ 2867,** this Court observed as under:

> *"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question is the negative the order of acquittal is not to be disturbed."*

11. Reverting to the facts of the present case, the respondent/accused in the present case was prosecuted for the commission of the offence under Section 138 of the Act and Section 138 of the Act has been reproduced below:-

> ***'138 Dishonour of cheque for insufficiency, etc., of funds in the account. —***
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> *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 provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], 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,20[within thirty 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.]'

From the above referred provisions of law, in order to prosecute an accused, the complainant has to lead evidence with regard to the following ingredients of the offence:-

(i) that the cheque in question was issued by the accused to the complainant for the discharge, in whole or in part

of any date or other liability and the cheque had dishonoured on account of insufficiency of funds etc.,

(ii) that the cheque had been presented to the bank within a period of 06 months from the date on which it was drawn on or within the period of its validity, whichever is earlier.

(iii) the payee issues a notice to the drawer of the cheque for payment of the money within a period of 30 days of the receipt of the information by him from the bank regarding the dishonour of the cheque.

(iii) The drawer of the cheque does not make payment of the said amount to the payee or holder of the cheque within a period of 15 days of the receipt of the notice.

12. In the present case, the trial Court has correctly observed that on the cheque return memo Ex.C-2, whereby, the cheque was returned to the payment by the bank, no date was mentioned. Since, the date regarding the return of the cheque by the bank to the applicant/complainant was not mentioned on Ex.C2, it was impossible to calculate the statutory period of 30 days from the date of memo. Since, the date of memo was not mentioned, the applicant/complainant could have examined any bank official to prove the date of issuance of memo and could have proved the offence and the doubt against the respondent/accused. However, the applicant/appellant himself led no evidence to prove the date on the memo Ex.C-2 nor any other witness was examined from the bank to prove the same. Consequently, the applicant/complainant could not

lead conclusive evidence with regard to the ingredients of the offence in the present case and the respondent/accused has been rightly acquitted by the trial Court. Even otherwise, learned counsel has failed to point out any irregularity, illegality or perversity in the impugned judgment passed by the trial Court and the application for leave to appeal is ordered to be dismissed.

13. Pending application(s), if any, also stand disposed off accordingly.

14.05.2025 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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