

2025:PHHC:080030



132.

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

CRM-A-309-MA-2014 (O&M)

Date of decision: 02.07.2025

Sucha Singh

.... Applicant

Versus

R.P. Singh

.... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Karan Bhardwaj, Advocate, for the applicant.

MANJARI NEHRU KAUL, J. (ORAL)

CRM-6828-2014

Application is allowed, as prayed for.

Annexures A-1 and A-2 are taken on record subject to all just exceptions.

CRM-A-309-MA-2014

1. The instant leave to appeal has been preferred by the applicant (hereinafter referred to as the complainant) against the judgment of acquittal passed by learned Judicial Magistrate Ist Class, Phillaur, whereby the respondent-accused was acquitted of the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act).

2. The case of the complainant in brief may be noticed as thus:

- (i) The complainant, a prospective traveller, allegedly paid an amount of Rs.4 lakhs to the respondent-accused, a

private travel agent, for arranging travel abroad. In purported discharge of the liability arising from this transaction, the respondent-accused issued two cheques bearing Nos.042366, 042368, each for Rs.1 lakh, dated 23.08.2007, drawn on Oriental Bank of Commerce, G.M.T. Public School, Jalandhar Bye Pass Chowk, Ludhiana;

- (ii) These cheques were allegedly presented for encashment and were returned unpaid with the remarks "*TODAY'S OPENING BALANCE INSUFFICIENT*". A legal notice dated 15.01.2008 was subsequently issued by the complainant demanding payment within the statutory period. Upon failure of the accused to make good the amount, a complaint under Section 138 of the NI Act was filed.
- (iii) The learned Trial Court, after recording evidence and evaluating the material on record, acquitted the respondent-accused. The Court held that the complainant failed to prove the essential ingredients of the offence under Section 138 of NI Act beyond reasonable doubt and found multiple discrepancies in the case of the complainant.

3. Learned counsel for the complainant submitted that the learned Trial Court erred in acquitting the respondent-accused despite the fact that the issuance of cheques and the signatures thereon were not denied by the accused. It was further argued that the cheques were issued by the accused in discharge of a legally enforceable debt and that the Trial Court failed to appreciate that the accused operated a Travel Agency along with Bikram

Singh and Ajay Kumar. The payment of Rs.4 lakhs was made to all three of them, including the respondent-accused, and hence, the liability was joint.

4. Learned counsel for the complainant further contended that the Trial Court placed undue emphasis on the statement of the complainant during cross-examination, wherein he mentioned that the amount was given to Bikram Singh, and incorrectly concluded that there was no liability on the part of the respondent-accused. It was argued that the complainant had consistently stated that the accused was jointly responsible, and this aspect was overlooked.

5. I have heard learned counsel for the parties and perused the material placed on record.

6. This Court finds no infirmity in the impugned judgment warranting interference.

7. To establish an offence under Section 138 of NI Act, the complainant must prove the following ingredients:-

- (i) The cheque was drawn by the accused on an account maintained by him;
- (ii) The cheque was issued for the discharge, in whole or in part, of any legally enforceable debt or liability;
- (iii) The cheque was presented to the Bank within the period of its validity;
- (iv) The cheque was returned unpaid by the Bank;
- (v) A legal notice demanding payment was issued to the drawer within 30 days of the receipt of information regarding dishonor;

- (vi) The drawer failed to make payment within 15 days of receiving such notice.

8. In the present case, a critical deficiency arises with respect to the time lines mandated under Section 138 of NI Act. The complainant claimed that the cheques were returned dishonored on 31.12.2007, and based on this, issued the statutory notice on 15.01.2008, however, the evidence on record contradicts this assertion.

9. CW2-B.K. Atwal, Special Assistant, Union Bank, categorically testified that the cheques were in fact returned unpaid to the complainant on 07.09.2007. He further deposed that the stamp indicating dishonor on 31.12.2007 was inadvertently affixed and was incorrect. He identified an entry in Ex.CW2/A, dated 07.09.2007, bearing the signatures of the complainant acknowledging receipt of the dishonoured cheques. Thus, the legal notice issued on 15.01.2008 was clearly beyond 30 days statutory period, rendering the complaint non-maintainable.

10. Further, the testimony of the complainant also failed to inspire confidence. During cross-examination, he admitted that the amount of Rs.4 lakhs was paid to Bikram Singh and not directly to the respondent-accused, R.P. Singh. While he later tried to link R.P.Singh as a partner in the Travel Agency, no credible documentary evidence was produced to prove such a partnership or joint liability. Moreover, the complainant failed to recall even the date of cheque presentation or of issuance of the legal notice, which casts serious doubt on the credibility of his version.

11. Another factual aspect is that although the accused did not dispute his signature on the cheques, mere issuance of a cheque does not *ipso facto* raise a presumption of legal liability. In view of the contradictions in the account of the complainant and absence of cogent evidence showing that the cheques were issued in discharge of a legally enforceable debt owed by the accused, the presumption under Section 139 of NI Act stands rebutted.

12. The Court, therefore, finds no merit in the contentions raised by the complainant. The learned Trial Court has carefully appreciated the evidence on record and rightly concluded that the complainant failed to prove the basic ingredients required to attract Section 138 of NI Act.

13. The statutory notice, having been beyond the permissible time limit, vitiates the entire complaint. Furthermore, the absence of a proven legal liability on the part of the respondent-accused coupled with the material discrepancies in the testimony of the complainant further weakens the case.

14. Accordingly, the present appeal stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

July 02, 2025
sanjeev

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