HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

CRR-3015-2011 (O&M)

Date of Decision: 07.01.2025

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Rajwinder Singh ... Petitioner

VS.

Tarlochan Singh & Anr. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. RM Sharma, Advocate for the petitioner

Mr. Rajiv Verma, DAG Punjab

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Sandeep Moudgil, J.

(1). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the judgment dated 07.10.2011 passed by Addl. Sessions Judge (Fast Track Court), Patiala and judgment dated 01.08.2008 passed by JMIC, Patiala vide the complaint filed by Tarlochan Singh under Section 138 of the Negotiable Instruments Act, 1881 (in short, the NI Act) has been dismissed concurrently by both the courts below.

(2). In the complaint, it was alleged that that the petitioner-accused had owed an amount of Rs.2,20,000/- towards the respondent-complainant and in discharge of his said legal debt, he issued a cheque No.573005 dated 16.1.2002 for a sum of Rs.2,20,000/-. However, the same on presentation before the Bank was returned vide memo dated 24.1.2002 with the remarks "No account". The respondent-complainant got issued a legal notice on 02.02.2002 through registered post. The petitioner did not make the payment of the cheque amount and hence the present complaint was filed on 15.03.2002.

(3). The trial court proceeded against the petitioner-accused on the basis of preliminary evidence led by the respondent and summoned him vide order dated 20.1.2003 to face trial under Section 138 of the NI Act and ultimately, vide judgment dated 01.08.2008, the trial court convicted the respondent under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for one year and to pay fine of Rs.1000/-.

(4). The petitioner-convict preferred an appeal against the trial court judgment dated 01.08.2008 which too has been dismissed vide judgment dated 07.10.2011 passed by Addl. Sessions Judge (Fast Track), Patiala.

(5). Learned counsel for the petitioner contends that the trial court at Patiala had no jurisdiction to entertain and decide this petition as the alleged transaction took place at Nabha. He further submits that no cogent evidence has been placed on record by the respondent-complainant to show that the legal notice was ever served upon the petitioner as the complainant has not produced any receipt in this regard.

(6). It is vehemently urged that a blank cheque was given as security to the complainant in relation to the business transaction with the petitioner in regard to poultry feed, however, the respondent denied that he used to give receipt/bills with his own handwriting and signature and in the wake of such stance, the specimen signature was taken and the same when compared with the receipts and bills issued by the respondent under the name of M/s Grewal Feed Stores was found to be written by one and the same person vide expert report (Ex.D1).

(7). Heard learned counsel for the parties and gone through the record.

(8). It is a case set out by the petitioner that about 7/8 years back, he used to purchase poultry feed from the respondent as he was running the business of poultry feeds under the name and style of Grewal Poultry Feed

Store and the respondent was managing the aforesaid business. As a transactional routine, the cheque in question was stated to be issued by the petitioner as security which the respondent-complainant retained with him. As regards the loan, the respondent has not placed on record any pronote or any receipt or document to the effect showing that there was actually any loan taken or the petitioner had an unsettled account to be fulfilled. As against this, the respondent has straightway denied any business dealing which on the fact of it has been contradicted by the petitioner by way of leading expert evidence to prove that the specimen signature on the receipt/bill issued in the name of poultry feed store has been duly matched with the handwriting of the respondent. The reason for denial on the part of the respondent of having issued any bill/receipt can be evidenced from the fact that a blank cheque was issued by the petitioner years ago and that too as a security.

(9). Another legal aspect that requires to be pondered over is whether the statutory period as provided under the NI Act can be tinkered with inasmuch as in the legal notice issued by the respondent-complainant, the petitioner-accused was asked to make payment within 7 days as against the statutory period of 15 days.

(10). It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that 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;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank;

(v) the payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

(11). Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the NI Act. In the present case, the legal notice was issued on 02.02.2002 whereas the cheque was dated 16.01.2002 for an amount of Rs.2,20,000/-. The period within which the petitioner-accused was called upon to make payment was 7 days whereas the statutory requirement under the NI Act is to make a demand notice calling upon the accused to payment within 15 days. Further, there is nothing on record before the trial court or before this Court that the legal notice was ever served upon the petitioner-accused for there is no acknowledgment receipt placed on record by the respondent.

(12). To make out an offence U/S.138 of the Act, the complainant has to prove the ingredients of the offence. A statutory obligation is imposed on the payee to issue a demand notice to the drawer. Mere giving a notice in writing will have no effect at all. The notice so issued should be received by the drawer of the cheque. Only upon such receipt of the notice and the same being acknowledged and thereafter the drawer fails to pay the cheque amount, the cause of action arises to initiate proceedings against the drawer whose cheque is dishonoured. This view of mine is reinforced from the decision ***M/s Dalmia Cement (Bharat) Ltd., Vs. M/S. Galaxy Traders and Agencies & Others. AIR 2001 SC 676***.

(13). The incantation of such facts becomes crucial in the wake of the counter-allegation of the petitioner that the cheque has been misused by the complainant to satisfy his bad intention and grudge may be due to business related issues. The reason for tinkering with the statutory requirement in respondent's modifying himself the demand notice period from 15 days to 7 days has also not been explained by him and has been given a go-bye at all levels of trial. Under Section 138 of NI Act, the notice of demand should give 15 days' period to pay, whereas in the notice under reference 7 days' time had been given and that as such, was not a proper notice as it did not conform to the specifications of the statute. In interpreting a penal provision of the Statute, it will not be appropriate to give an extended meaning to the plain words of the Section. I draw support from the view taken by a Coordinate Bench of this

Court in ***Embee Textiles Ltd. v. Sadhuram and Co., 1993 (Supp) MWN (Cri) 128 (P&H)***, the relevant extracts whereof reads as under:-

> *"9. Section 138 of the Act stipulates that holder of the cheque will make a demand for payment of the amount by giving a notice in writing to the drawer who will make payment of the amount within 15 days, but in the present case vide notice Annexure P/4 the petitioners were asked to make payment within 30 days so notice did not conform to the specifications of statute. In interpreting a penal provision it will not be appropriate to give an extended meaning to the plain words of the section. The petitioner in this case countermanded the payment by a stop memo in pursuance of the agreement arrived at with the respondent and in view of the circumstances explained by the petitioners there was no prima facie case covered under the penal provisions The complaint amounted to an abuse of the process of the Court as the cheques were presented to the bank after it was agreed that the same will be returned to the petitioners*
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> *In view of the above discussion I accept this petition and quash the complaint Annexure P/6 and all further proceedings in pursuance thereof pending in the Court of Chief Judicial Magistrate, Bhatinda."*

(14). It can safely be said that the legal notice served upon the petitioner was not in consonance with the statutory provisions of the NI Act wherein the period within which the issuer of cheque has to make payment has been provided as 15 days but as an admitted fact, the petitioner herein was called upon by the respondent against the dishonoured cheque within a period of 7 days giving an extended meaning to the statutory requirement as provided under Section 138 of the NI Act and that being so, the whole proceedings so initiated by the complainant stands vitiated as a consequence of which, the petitioner deserves to be acquitted on this ground alone.

(15). In the light of the above discussion, this petition is allowed and the judgment dated 07.10.2011 passed by Addl. Sessions Judge (Fast Track Court), Patiala and judgment dated 01.08.2008 passed by JMIC, Patiala are hereby set aside.

(16). Ordered accordingly.

07.01.2025
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*