

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1689-2017 (O&M)

Decided on 24.01.2025

Shashank Jha

... Petitioner

VS.

Balbir Singh

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Naresh Jain, Advocate for the petitioner

Mr. Manish Soni, Advocate for

Mr. Gurdeep Grewal, Advocate for the respondent

Sandeep Moudgil, J.

(1). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the impugned judgment dated 01.04.2017 passed by Sessions Judge, Gurgaon whereby the petitioner has been acquitted, however, in the later part of the judgment, the case has been remanded back to the trial court in a complaint under Section 138/141/142 of Negotiable Instruments Act, 1881 (in short, the 1881 Act) filed by the respondent-complainant against the petitioner.

(2). The petitioner-accused is stated to have opened a coffee shop together in a partnership with respondent-complainant with an assurance that he would send the profit regularly every month and thus, the latter invested Rs.12,00,000/- for the said business. In discharge of his partial liability, the petitioner-accused issued cheques bearing No. 679423 dated 01.03.2013 for Rs. 80,000/- and 679424 dated 01.03.2013 for Rs. 77,000/- in favour of the respondent-complainant, however, the same could not be honoured and was returned by the Bank with remarks "Fund Insufficient". A legal notice was got

issued to the petitioner followed by a complaint before the trial court under Section 138 of NI Act.

(3). The trial court vide judgment and order dated 30.08.2016 observed that the respondent had sufficiently proved that the cheque in question was issued by the petitioner in discharge of his existing legally enforceable liability and as such held him guilty under section 138 of NI Act and sentenced him to undergo simple imprisonment for two years and ordered him to pay compensation of Rs.2 lakhs to the complainant for the harassment and expenses towards litigation.

(4). Aggrieved by the same, the petitioner filed appeal before the Sessions Judge, Gurgaon and vide impugned judgment dated 01.04.2017, the appellate court held that the trial court fell in procedural error by deciding the case without issuing notice to M/s Valiant Automation P.Ltd. and that only the petitioner has been arrayed as an accused and not the company and as such, the company could not explain its stand about the issuance of cheque signed by the petitioner being authorized signatory of the said company. The appellate Court has thus set aside the judgment of conviction and order of sentence dated 30.08.2016 and remanded the case to the trial court for fresh trial. Hence the present revision petition has been filed.

(5). Learned counsel for the petitioner submits that as per the case of the complainant the agreement was executed by M/s Valiant Automation Pvt. Ltd with M/s Balbir Singh (HUF) and the alleged cheque was also issued by M/s Valiant Automation Pvt. Ltd through its authorized signatory and it has been duly admitted by the complainant in his cross-examination that no notice was sent to the company except the present petitioner in his individual capacity

by not mentioning him as Director or Managing Director or Signatory and as such, the debt if any was against the company only and the notice should have been sent to the company itself as per Proviso (b) of Section 138 of NI Act and in absence of the same the Court could not take cognizance of the offence itself as per Section 142 of the Negotiable Instrument Act.

(6). It is further argued that the trial court gravely erred in taking cognizance of the offence and issuing of process only against the petitioner inasmuch as the provision of Section 138(b) of the NI Act is indispensable and breach of the same should have resulted into dismissal of the complaint filed by the complainant and as such, complaint was not maintainable. Reliance has been placed on the decision of the Supreme Court in **Himanshu vs. B.Shivamurthy & Anr. (2019) 3 SCC 797** wherein it has been held that when company is not arraigned as accused, the complaint against the accused is unmaintainable as the cheque was signed by the accused for and on behalf of the company.

(7). He then averred that the Appellate Court wrongly remanded the case back for re-trial and has failed to appreciate that now the limitation for issuance of notice under section 138 of NI Act has expired and even the limitation for filing complaint against the accused company has also expired and the said delay cannot be condoned in any manner and therefore, in such circumstances, remanding the case back for re-trial will be a futile exercise as the complaint is barred by limitation, at this stage. He submits that in the absence of legal notice issued to the company and non-filing of complaint within the prescribed period, the lacuna cannot be cured even after remand made by the appellate Court.

(8). Another argument raised on behalf of the petitioner is that the complainant realized the defect in the complaint and moved an application for correction of the mistake by submitting that the company could not be impleaded as the party in the present case and the said application was wrongly and illegally accepted by the trial court in sheer violation of the settled law which provides that for the defect in the complaint, the complainant has to suffer and the trial court has no power to allow the complainant to remove the defect and moreover, the order was passed beyond the period of limitation for filing a complaint and therefore, the remand of case for re-trial will not serve any purpose because complaint as such is defective and was liable to be quashed.

(9). On the other hand, learned counsel for the respondent submits that the judgment passed by the trial court in observing that there was a technical error in the procedure for the cheque Ex.C2 which was issued by the petitioner-accused on behalf of M/s Valiant Automation Private Limited and the said Company was also impleaded as party vide order dated 05.01.2016 by the trial court, however, inadvertently, summons could not be issued to respondent No.2-M/s Valiant Automation Private Limited and even in the title of impugned judgment, name of respondent No.2-M/s Valiant Automation Private Limited has not been mentioned and this technical error on the part of trial Court can be corrected by remanding back the case for serving notice to respondent No.2-Company.

(10). Heard learned counsel for the parties.

(11). The sole issue raised on behalf of the petitioner-accused is that the judgment passed by the appellate Court whereby on one hand, the conviction of

the petitioner has been set aside and on the other hand, the case has been remanded back to the trial court for conducting trial afresh is wholly unjustified and untenable in the eyes of law as according to him, re-trial will not serve any purpose because the petitioner's company, namely, M/s Valiant Automation Private Limited has not been impleaded any authorized person and that no legal notice has been issued to the company. A perusal of the judgment passed by the courts below would show that admittedly, the petitioner and his wife Ritu Shashank Jha are Directors of the said company since its inception from 29.12.2003 and it is the petitioner who had signed the cheque on behalf of accused/company. Thus, once the legal notice has been issued to the signatory of the cheque then there is no requirement of sending separate notice to the company.

(12). Before the appellate court, it has come on record that though vide order dated 05.01.2016 of the trial court, M/s Valiant Automation Private Limited was impleaded as accused/respondent No.2 but no notice was issued to it before recording evidence and holding the petitioner guilty, although, the said Company is stated to be not in existence and it has been rightly held that every such averment has to be based upon document or material on record.

(13). The appellate Court countered the argument of the petitioner that the judgment of the trial court cannot be remanded simultaneously by setting aside the judgment of conviction by referring to Section 386 CrPC which is reproduced as under:-

"386. Powers of the Appellate Court.

- After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and

in the case of an appeal under Section 377 or Section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may –

(a)in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b)in an appeal from a conviction -(i)reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or(ii)alter the finding, maintaining the sentence, or(iii)with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c)in an appeal for enhancement of sentence -(i)reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court competent to try the offence, or(ii)alter the finding maintaining the sentence, or(iii)with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d)in an appeal from any other order, alter or reverse such order;

(e)make any amendment or any consequential or incidental order that may be just or proper :Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal."

(14). Section 386 CrPC provides that when an appellate court identifies errors in the trial process—such as improper rulings, procedural mistakes, or exclusion of admissible evidence—it can remand the case back to lower courts for a new trial. This remand does not imply that the original decision was incorrect; rather, it is based on procedural errors that need rectification.

(15). The observation of the appellate court that the trial Court fell into procedural error by deciding the case without issuing notice to M/s Valiant Automation Private Limited as respondent No.2 cannot be tinkered with, for, the impugned judgment makes no mention of Respondent No. 2 (the Company) except in the title, where only the present appellant/accused is listed. Notably, Respondent No. 2 was not reflected as an accused/respondent. This omission suggests that, despite being impleaded, the trial court inadvertently failed to issue notice to the Company, requiring it to explain its position regarding the cheque (Ex. C2) signed by the present appellant as the authorized signatory and such circumstances, on the face of it, warranted the appellate court to exercise power under Section 386(b) CrPC to set aside the impugned judgment of conviction and order of sentence and remand the case to the trial Court to adjudicate the trial afresh so that no prejudice is caused to any party. No exception can be taken to the view taken by the appellate Court.

(16). In view of the above discussion, there is no legal infirmity and perversity in the order passed by the trial court. Hence the present revision petition is dismissed.

24.01.2025

V.Vishal

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

(Sandeep Moudgil)
Judge

Yes/No
Yes/No