HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Appeal No. 3372/2023
CNR: RJHC020461152017 | URN: CRLAS / 15U / 2023

M/s. Saboo Sodium Chloro Limited having its registered office at Surya House, L-5, B-11, Krishna Marg, C-Scheme, Jaipur. Director Shri Girdhar Saboo. Authorized Signatory Shri Pradeep Saxena S/o Late Shri Chand Narayan Saxena, Manager Saboo Sodium Chloro Limited.

----Appellant

Versus

Rajeev Kumar Sehgal S/o Late Shri Heera Lal Sehgal, aged 50 years, Proprietor Firm M/s. Sunny Sales, R/o 6MD Block, Gokul Apartment 14, Watkins Lane, Howrah (West Bengal).

----Respondent

Connected With

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----Respondent

For Appellant(s) : Mr. Yogendra Singh Rajawat, Adv.
For Respondent(s) : None present

HON'BLE MR. JUSTICE PRAVEER BHATNAGAR
Judgment

1. **Date of conclusion of arguments** **14/10/2026**
2. **Date on which the judgment was reserved** **14/10/2026**
3. **Whether the full judgment or only the operative part is pronounced** **Full Judgment**

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4. Date of pronouncement **27/10/2026**

1. By way of these criminal leave to appeal applications, the appellant-complainant- M/s Saboo Sodium Chloro Limited, has assailed the judgment dated 24.11.2016 (‘impugned judgment’) passed by the learned Special Metropolitan Magistrate (N.I. Act Cases) No.9, Jaipur Metropolitan in Complaint Case No.745/2016 whereby the complaint instituted under Section 138 of the Negotiable Instruments Act, 1881 (‘Act of 1881’) has been dismissed and the respondent-accused has been acquitted of the alleged offence.

2. Since both these applications arise out of the same impugned judgment, involving dishonour of two different cheques bearing (Nos. 025303 and 025304) each for an amount of Rs. 15,00,000/- and raises common questions of fact and law, they are being decided together by this common judgment.

3. Briefly put, the appellant-company alleged that the respondent-accused, proprietor of M/s Sunny Sales and its Clearing and Forwarding Agent (‘C&F Agent’) had an outstanding liability of Rs.34,87,888/- towards goods supplied and towards discharge of the said liability, the respondent issued two cheques bearing Nos.025303 and 025304, both dated 18.10.2006, for Rs.15,00,000/- each, which were dishonoured on 04.11.2006 due to insufficiency of funds. Despite service of the statutory notice dated 11.11.2006, the respondent failed to make payment, compelling the appellant to institute a complaint under Section 138 of Act of 1881. The appellant examined its authorised representative- Pradeep Saxena (PW-1) and exhibited the relevant

corporate documents, agreement, ledger, cheques, return memos and statutory notice along with proof of service and the respondent did not lead any defence evidence. Thereafter, the learned trial Court, vide impugned judgment dated 24.11.2016, dismissed the complaint and acquitted the respondent, holding that the existence of a legally enforceable debt or liability had not been established.

4. Learned counsel for the appellant-complainant submits that the impugned judgment is contrary to the evidence available on record and suffers from material illegality and perversity. It is contended that the respondent’s appointment as a C&F Agent of the appellant-company and the supply of goods pursuant to the agreement executed between the parties stood established. The outstanding liability of Rs.34,87,888/- was reflected in the original ledger (Exhibit P-4), whose relevant entries were not specifically disputed during the cross-examination of Pradeep Saxena (PW-1).

5. Learned counsel further submits that the authority of PW-1 to institute and pursue the complaint on behalf of the appellant-company stood duly established through the authority letter (Exhibit P-2) and the learned trial Court erred in drawing an adverse inference merely because the same did not bear the company’s seal or was not accompanied by a separate power of attorney. It is argued that the learned trial Court also erred in placing undue reliance upon the non-production of individual invoices, railway receipts, transport bills and other dispatch documents, despite the agreement and original ledger having been produced on record and mere absence of such documents

could not by itself negate the liability arising from the business transactions between the parties.

6. Learned counsel also contends that the learned trial Court failed to give due effect to the statutory presumptions under Sections 118 and 139 of the Act of 1881, which arose upon issuance of the two cheques bearing Nos.025303 and 025304 for Rs.15,00,000/- each and their dishonour on account of insufficiency of funds. It is submitted that the respondent failed to make payment despite service of the statutory notice and did not lead any defence evidence to rebut the aforesaid presumptions. It is contended that the respondent's failure to adduce defence evidence, considered alongside the documentary evidence produced by the appellant, ought to have weighed in favour of the complainant and that the learned trial Court erred in accepting the defence without sufficient evidentiary basis. In this regard, reliance was placed upon the following judgments: **Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel & Anr**.[1]; **Rohitbhai Jivanlal Patel v. State of Gujarat & Anr**.[2]; and **Sanjabij Tari v. Kishore S. Borcar & Anr**.[3]

7. Lastly, it is submitted that the learned trial Court erred in treating the absence of separate civil recovery proceedings or arbitration as a circumstance against the appellant, as the remedy under Section 138 of the Act of 1881 is independent of the remedies available for recovery of the underlying debt. Therefore, it is prayed that leave to appeal be granted and the impugned judgment of acquittal be set aside.

1 (2023) 1 SCC 578
2 (2019) 18 SCC 106
3 2025 INSC 1158

8. No one has appeared on behalf of the sole respondent.

9. Heard learned counsel for the parties and perused the material available on record.

10. Upon consideration of the submissions advanced and the findings recorded by the learned trial Court, it emerges that the cheques in question were issued in the course of the business relationship between the parties. However, the mere issuance and dishonour of the cheques would not by themselves establish the existence of a legally enforceable liability to the extent of the entire amount covered thereby, particularly when the cheques are stated to have been furnished as security under the C&F agency arrangement. In this regard, Condition No.10 of the agreement (Exhibit D-1) reads as follows:

> "C & FA hereby expressly agree to indemnify the Company against any and all kind of losses and damages which may occur to the company due to the act of Commission and or omission on the part of C&FA arising out of the activities as a clearing & forwarding agents of the Company and all pay to the Company all such losses and damages as determined and quantified by the Company within 15 days of demand raised in writing by the Company. C & FA shall not be entitled to raise any dispute whatsoever as to the actual determination or the quantification by the Company of the losses or damages."

11. A perusal of the aforesaid condition reveals that the contractual obligation to indemnify the appellant-company was linked to losses or damages arising from the acts or omissions of the C&F Agent, which were to be determined and quantified by the company and demanded in writing. Thus, where the security cheques are sought to be enforced on the ground of breach of contractual obligations, the appellant was required to establish

that the liability had crystallised and was legally recoverable to the extent of the cheque amount, in accordance with the terms of the agreement. Therefore, a mere assertion of breach, without establishing the corresponding liability and compliance with the contractual requirements would not by themselves justify recovery of the entire amount covered by the security cheques.

12. Furthermore, it is an admitted position that no notice was ever issued specifying the amount claimed in the complaint, as contemplated under Condition No.10 of the Agreement (Exhibit D-1). Thus, the contractual obligation contemplated under the aforementioned condition was not merely dependent upon an alleged breach but also required determination and quantification of the losses or damages and a written demand in accordance with the terms of the agreement.

13. It is true that security cheques may be invoked towards an enforceable liability arising from the underlying transaction or contractual arrangement. However, their mere issuance does not dispense with the requirement of establishing the existence of a legally enforceable debt or liability corresponding to the amount covered by the cheques.

14. In the present case, the complainant has failed to establish that an amount of Rs.34,87,888/- was due and payable by the accused-respondent and that apart from the computer-generated ledger (Exhibit P-4), no cogent evidence was produced to establish that the goods in question had actually been supplied to the accused-respondent. The best evidence in this regard would have been the invoices, railway receipts, transport documents or other

contemporaneous records demonstrating the dispatch and receipt of the goods and in the absence of such evidence, the learned trial Court found the ledger entry insufficient to establish the alleged liability.

15. Moreover, the mere provision of security cheques under the agreement does not obviate the requirement of establishing the underlying liability sought to be enforced and therefore, in the absence of sufficient evidence establishing the alleged outstanding amount and the legally enforceable liability corresponding to the cheques, the learned trial Court found the essential ingredients of the offence under Section 138 of the Act of 1881, not to have been established.

16. In view of the aforesaid discussion, this Court concurs with the findings recorded by the learned trial Court and finds no cogent ground warranting interference with the judgment of acquittal passed in favour of the accused-respondent.

17. Consequently, these present applications seeking leave to appeal are dismissed and the judgment dated 24.11.2016, passed by the learned Special Metropolitan Magistrate (N.I. Act Cases) No.9, Jaipur Metropolitan in Complaint Case No.745/2016 acquitting the respondent-accused is upheld.

18. All pending application(s), if any, stand disposed of.

(PRAVEER BHATNAGAR),J

85-86/Ashwani Kr Srivastava