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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR-4041-2012 (O&M)
Date of decision : 10.03.2025

Kunwar Pal **...Petitioner**

Versus

Satish and another **...Respondents**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sachin Mittal, Advocate
for the petitioner.

Mr. S. S. Mor, Advocate
for the respondents.

<u>MANISHA BATRA, J.</u> *<u>(Oral)</u>*

1. The present revision petition has been filed against the judgment dated 09.09.2011, passed by the learned Judicial Magistrate First Class, Gurugram in complaint bearing No. 110 of 2006, titled as ***Kunwar Pal vs. Satish and another***, filed under Sections 138 and 141 of the Negotiable Instruments Act, 1881 (for *short 'N. I. Act')*, whereby respondent No. 1 and respondent No.2-firm were acquitted of the charges framed against them under the aforesaid sections; as well as for setting aside the judgment dated 08.10.2012, whereby the appeal filed by the petitioner/complainant had been dismissed by the lower appellate Court.

2. Adumbrated facts as emanating from the record and relevant for the purpose of disposal of this petition are that respondent No. 1/accused, who was proprietor of respondent No. 2-firm, availed loan to the tune of Rs. 5 Lakhs from the petitioner/complainant for a period of one month with a promise to repay the same along with interest. He had issued a cheque bearing

number 140558 dated 23.09.2005 in favour of the petitioner to discharge his legally enforceable liability. This cheque was presented with the banker of the petitioner and was dishonoured with the remarks 'insufficient funds'. Legal notice was issued by the petitioner on 21.03.2006 calling upon the respondents to make the payment but to no avail, thereby compelling him to file the aforementioned complaint.

3. On considering the preliminary evidence, order for summoning of the respondents under Section 138 of the N. I. Act had been passed. Respondent No. 1 appeared before the learned trial Court. Notice of accusation was served upon him. The petitioner produced oral as well as documentary evidence. Respondent No. 1 was examined under Section 313 of Cr.P.C. He pleaded innocence. He examined one witness in defence.

4. On considering the contentions as raised by both the sides and after appreciating the evidence produced on record, learned trial Court acquitted the respondents of the charges as framed against them, vide judgment dated 09.09.2011. Appeal against the said judgment had also been dismissed by the learned first appellate Court, vide judgment dated 08.10.2012. Feeling dissatisfied, this petition has been filed by the petitioner/complainant.

5. Learned counsel for the petitioner has vehemently argued that the impugned judgments as passed by the Courts below are liable to be set aside as the findings given therein are not sustainable in the eyes of law. The Courts below did not apply their judicious mind. It is submitted that undisputedly, the petitioner had presented the cheque in question before his banker twice. The cheque was firstly presented on 07.01.2006 and had been dishonoured. It is

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also not disputed that a legal notice was also issued against the respondents as on 20.01.2006. It is further submitted that the Courts below wrongly observed that after presentation of the cheque and issuance of notice once, the petitioner was not entitled to present the cheque again and to issue a second legal notice to the respondents. It is argued that the cause of action to file and pursue the complaint survived even after issuance of first notice and receipt of the same by the respondents/accused and, therefore, the right of the petitioner, who was holder of the cheque in question, to prosecute respondent No. 1, who was drawer of the cheque and proprietor of respondent No. 2-firm, was not lost at all. It is argued that the petitioner was well within his rights to present the cheque in question any number of times within its validity and could prosecute the drawer even on second or successive default and this is what had been by him. It is, therefore, urged that the impugned judgments are liable to be set aside, the revision petition deserves to be accepted and the matter deserves to be remanded to the learned trial Court. In support of his arguments, learned counsel for the petitioner has relied upon the authorities cited as ***M/s Sicagen India Ltd. vs. Mahindra Vadineni and others : 2019 (1) RCR (Criminal) 788*** and ***MSR Leathers vs. S. Palaniappan : 2012 (4) RCR (Civil) 485***.

6. *Per contra*, learned counsel for the respondents has argued that the revision petition filed by the petitioner does not deserve to be allowed. It is argued that the learned Courts below had rightly observed that the cause of action to file the complaint accrued in favour of the petitioner when the first notice was issued, received and replied to by the respondents but the complaint was filed on 28.04.2006, i.e. much beyond the statutory period and

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was obviously barred by limitation and even otherwise was not sustainable. It is argued that there is no illegality or infirmity in the impugned judgments, passed by the learned Courts below, and they deserve to be affirmed. It is, thus, urged that the petition is devoid of any merit and is liable to be dismissed.

7. Learned counsel for the parties have been heard at considerable length and the trial Court record has been minutely scrutinized.

8. Before delving into the merits of the present case, this Court considers it appropriate to refer to the provisions of Section 138 of the N. I. Act at the very outset. As per this section, when 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, the person who issues or indorses such a cheque, is liable for punishment in terms thereof.

9. The cheque in question was admittedly issued by respondent No. 1, being proprietor of respondent No.2-firm, in favour of the petitioner. There is no dispute about the fact that it was bearing the signature of respondent No. 1. There is a presumption that it was issued the respondents to discharge a legally enforceable liability and this presumption has not even been rebutted by the respondents by producing any evidence to the contrary. It has also come on record that this cheque was presented before the banker of the petitioner twice. Firstly, it was presented on 07.01.2006 and was dishonoured on 09.01.2006. A legal notice is shown to have been issued on 20.01.2006, which was admittedly replied by respondent No. 1 on 31.01.2006.

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Though, it was not mentioned in the complaint filed by the petitioner, however, it has come on record and also not disputed by the petitioner that this cheque was again presented by him on 16.03.2006 and it was dishonoured on 17.03.2006. The petitioner had then issued a second legal notice on 21.03.2006 and thereafter, the complaint was filed under Section 138 of the N. I. Act on 28.04.2006. On assuming that the cause of action had accrued in favour of the petitioner to file the complaint on issuance of second legal notice, the complaint would be considered to be filed within the statutory period of time.

10. The question that, however, crops up for consideration before this Court is as to whether the fact that a legal notice was issued on 20.01.2006 after dishonour of the cheque on 09.01.2006, had forbidden the petitioner to institute a criminal complaint? The learned trial Court, while passing the impugned judgment dated 09.09.2011, observed that once the petitioner had given notice under Section 138(b) of the N. I. Act to the accused, he forfeited the right to present the cheque again and complaint could also be filed only within a period of one month from accrual of cause of action which was considered to have accrued on 20.01.2006. It was held that the complaint was not maintainable as the complainant had got no right to present the cheque again. The learned first appellate Court, while upholding the observations made by the learned trial Court, had made similar observations.

11. On a careful assessment of the material placed on record, this Court is of the considered opinion that the findings given by the learned Courts below are not sustainable. Learned first appellate Court had relied upon the observations made in ***Sadanandan Bhadran vs. Madhavan Sunil***

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Kumar : 1998 (4) RCR (Criminal) 90. However, the correctness of the decision in ***Sadanandan Bhadran***'s case (supra) was doubted and it was referred to a larger Bench. This case was overruled in ***MSR Leathers***'s case (surpa), wherein the Hon'ble Supreme Court had observed that there was nothing in the provisions of Section 138 of the N. I. Act that forbids the holder of a cheque to make successive presentations of the same and institute a criminal complaint on second or successive dishonour of the cheque on its presentation. Hon'ble Supreme Court had made following observations in the said case:

> "27. It is trite that the object underlying Section 138 of the Act is to promote and inculcate faith in the efficacy of banking system and its operations, giving credibility to Negotiable Instruments in business transactions and to create an atmosphere of faith and reliance by discouraging people from dishonouring their commitments which are implicit when they pay their dues through cheques. The provision was intended to punish those unscrupulous persons who issued cheques for discharging their liabilities without really intending to honour the promise that goes with the drawing up of such a negotiable instrument. It was intended to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case the cheque was dishonoured and to safeguard and prevent harassment of honest drawers. (See ***Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd. (2006) 3 SCC 658, C.C. Alavi Haji v. Palapetty Muhammed & Anr. (2007) 6 SCC 555 and Damodar S. Prabhu v. Sayed Babulal H. (2010) 5 SCC 663)***. Having said that, we must add that one of the salutary principles of interpretation of statutes is to adopt an interpretation which promotes and advances the object sought to be achieved by the legislation, in preference to an interpretation which defeats such

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object. This Court has in a long line of decisions recognized purposive interpretation as a sound principle for the Courts to adopt while interpreting statutory provisions. We may only refer to the decisions of this Court in ***New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar (AIR 1963 SC 1207)***, where this Court observed:

"…It is a recognised rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning, the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its power invalid."

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31. Applying the above rule of interpretation and the provisions of Section 138, we have no hesitation in holding that a prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default which was followed by a statutory notice and a failure to pay had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honour their commitments made in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other

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> similar reason. There is in our opinion no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second or successive time."

12. The judgment rendered in ***MSR Leather***'s case (supra) was relied upon by Hon'ble Supreme Court in ***M/s Sicagen'***s case (supra), wherein also, the issue involved was whether the prosecution based upon second or successive dishonour of the cheque is permissible or not. In that case, the cheque was presented twice and even notice was issued twice. It was observed that the complaint based on second statutory notice was not barred.

13. Since in the instant case, the execution of cheque in question by respondent No. 1 is not in dispute and the respondents did not raise any contention to the effect that the cheque in question was not issued for any legally enforceable debt and the only contention was that the prosecution could not be launched on second notice, therefore, on considering this contention in view of ratio of law laid down in the above cited authorities, it is noticed that since the cheque in question was presented for the second time as on 16.03.2006, was dishonoured on 17.03.2006, second legal notice was issued on 21.03.2006 and the complaint was filed on 28.04.2006 within the statutory period of limitation and, therefore, it could not be stated that it was barred by the law of limitation or the same could not be filed on the basis of second notice.

14. In view of the discussion as made above, it is observed that the findings given by the learned Courts below are certainly not sustainable. Accordingly, the present petition is allowed. The impugned judgments are set

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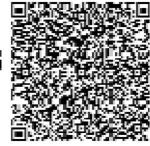

aside. The matter is remanded to the learned trial Court to decide the same afresh as per its merit in accordance with law. The parties are granted liberty to raise all the contentions before the learned trial Court. The complaint before the learned trial Court is ordered to be restored to its original number. The parties in person/through their counsel are directed to appear before the learned trial Court on 21.04.2025.

10.03.2025 **(MANISHA BATRA)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes*

Whether reportable *Yes*