

(2022-3)207 PLR 313, PLRonline 424573

Punjab and Haryana High Court

Before: Mr. Justice Avneesh Jhingan

ANOOP SINGH – Petitioner,

Versus

DAL SINGH – Respondent.

CRM-A-82-MA of 2017 (O&M)

Negotiable Instruments Act, 1881 (26 of 1881) S. 138 - No pleadings in the complaint and legal notice that the cheque was issued for discharge of “debt or other liability” - In cross-examination complainant tried to set up a case that friendly loan was advanced and the cheque was issued for repayment of the loan - Apart from making a bald statement in cross-examination, nothing was produced to substantiate it - In absence of cheque having been issued for discharge of debt or other liability, mere fact that signatures on cheque were not disputed in itself will not be enough for conviction under [Section 138](#) of the Act.

Cases referred to:

1. (2014-4)176 PLR 077, *Dashrath Rupsingh Rathod v. State of Maharashtra*

Ms. Rahish Pahwa Dudeja, for the petitioner.

Avneesh Jhingan, J (Oral) - (10th May, 2022) - These applications are filed seeking leave to Appeal against the judgment dated 10.8.2016 passed by Judicial Magistrate Ist Class, Karnal dismissing the complaints filed by the petitioner. The applications are accompanied by the applications for condoning the delay of 72 days.

1. As the facts, issue involved are similar and parties are same, these two petitions are being decided by common order.
2. However, facts have been taken from CRM-A-82-MA of 2017. The brief facts are that the petitioner filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, ‘the Act’) on dishonouring of cheque bearing No. 026937 dated 23.4.2012 amounting to Rs.2,00,000/- drawn on HDFC Bank, Karnal. The cheque was returned with the remarks “insufficient funds”. After issuing notice, the complaint was filed.
3. The trial court vide judgment dated 10.8.2016 acquitted the respondent, hence the present application.
4. Learned counsel for the petitioner submits that the trial court erred in acquitting the respondent, as there was no dispute that the cheque was signed by the respondent

and he had handed over the cheque to the petitioner.

5. The trial court after appreciating the facts and evidence adduced concluded that there were no pleadings in the complaint and legal notice that the cheque was given to the petitioner for discharge of "debt or other liability".
6. During cross-examination the petitioner tried to set up a case that friendly loan was advanced and the cheque was issued for repayment of the loan. Apart from making a bald statement in cross-examination, nothing was produced to substantiate it, resultantly the respondent was acquitted.
7. In *Dashrath Rupsingh Rathod v. State of Maharashtra*, (2014-4)176 PLR 077 the Supreme Court held as under:

"31. To sum up:

(i) An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.

(ii) Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to Section 138.

(iii) The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if

(a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue.

(b) If the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque and

(c) If the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.

(iv) The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.

(v) The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the Court till such time cause of action in terms of clause

(c) of proviso accrues to the complainant.

(vi) Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured.

(vii) The general rule stipulated under Section 177 of Cr.P.C applies to cases under Section

138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the Court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof.” It is an admitted fact that there were no pleadings made that cheque was issued in discharge of ‘debt or other liability’.

9. The mere fact that signatures on cheque were not disputed in itself will not be enough for conviction under Section 138 of the Act, in absence of cheque having been issued for discharge of debt or other liability.

10. No case is made out for grant of leave to appeal as no legal or factual error, much less perversity, has been pointed out in the impugned order. The conclusion arrived at by the trial court is plausible.

11. The applications are dismissed.

12. Since the applications for grant of leave to appeal are dismissed on merits, the applications for condonation of delay are disposed of accordingly.

13. Photocopy of the order be placed on the file of connected case.

RMS – Acquittal upheld