



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 15.12.2025
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+ **CRL.A. 926/2002**

H.C.GUPTA

.....Appellant

Through: Mr. Hemant Singh and Ms. Urvashi
Jain, Advocates

versus

M/S J.K.IRON & STEEL MFG. CO.

.....Respondents

Through: Mr. Himanshu Anand Gupta,
Advocate
(Amicus Curiae)

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed challenging the judgment of conviction dated 17.10.2002 and the order on sentence dated 29.10.2002, passed by the Trial Court in Complaint Case No. 763/02 (also reflected as CC No. 74/2001), whereby the appellant was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and sentenced to undergo rigorous imprisonment for six months, along with a fine of Rs.1,60,000/-, and in default thereof, further rigorous imprisonment for a period of three months.
2. Vide order dated 25.11.2002, this Court suspended the sentence of the appellant during pendency of the appeal.
3. The present appeal has remained pending for over two decades, during which period the appellant has remained continuously untraceable despite



issuance of Court notices,ailable warrants as well as non-ailable warrants. Notices issued to the surety and to the respondent-complainant have also remained unserved.

4. In view of the prolonged non-appearance of the appellant, and to ensure adherence to principles of natural justice, this Court directed the Delhi High Court Legal Services Committee (DHCLSC) to appoint counsel to represent the appellant. Subsequently, considering that the respondent firm had also remained unrepresented and that its Managing Partner had expired in the year 2022, an *Amicus Curiae (pro bono)* was appointed to represent the respondent-complainant as well.

5. The relevant factual chronology emerging from the Trial Court record and the subsequent proceedings is briefly that a complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed alleging dishonour of five cheques, numbered as: 174637, 174638, 174639, 174640 and 174641. These cheques aggregated to approximately Rs.1,41,000/-, which were stated to have been issued by the appellant towards discharge of liability arising out of commercial dealings between the parties. Upon presentation, the said cheques were dishonoured. Statutory demand notice was thereafter issued to the appellant, which, despite service, did not result in payment of the cheque amount within the statutory notice period prescribed, leading to initiation of criminal proceedings.

6. From the record of the Trial Court, it emerges that the defence of the appellant was that the cheques were not issued towards a legally enforceable debt, that the complainant had allegedly failed to supply pipes/material, and that payment had been stopped.

7. In support of its case, the prosecution examined three witnesses, The



accused examined three witnesses in defence, DW-1 Sh. *Jai Pal Verma*, DW-2 Sh. *Rishabh Jain*, and DW-3 Sh. *Harish Chand Gupta* (the accused himself).

8. PW-1 Sh. *Jai Kishan*, proprietor of *M/s J.K. Iron & Steel Manufacturing Co.*, deposed that he was engaged in the business of iron and steel and that the accused, Sh. *H.C. Gupta*, was a regular customer of his firm and bought “conduit pipes” from him. According to PW-1, accounts between the parties were settled on 01.04.1993 for the period ending 31.03.1993, at which time a sum of Rs.40,000/- was outstanding against the accused. On 01.04.1993, a bill for Rs.1,00,380/- was raised, copy whereof was exhibited as Ex. PW-1/A, and the statement of account was exhibited as Ex. PW-1/B. Towards discharge of the outstanding liability, the accused delivered five cheques drawn in the name of *M/s Calcutta Steel Traders*, of which he was the proprietor. The said cheques were exhibited as Ex. PW-1/C to Ex. PW-1/G, aggregating to Rs.1,41,000/.

PW-1 further deposed that the said cheques were presented for encashment on 24.08.1993 and were returned unpaid on 26.08.1993 vide bank return memos exhibited as Ex. PW-1/H to Ex. PW-1/Q with the remarks “*Stop Payment*”. Upon enquiry, the bank informed him that there was no sufficient balance in the account of the accused. He proved the statutory legal notice which is exhibited as exhibited PW 1/R postal receipts as Ex. PW-1/R-1 and Ex. PW-1/R-2, and acknowledgment cards as Ex. PW-1/R-3 and Ex. PW-1/R-4. Despite service of notice, no payment was made by the accused.

During cross-examination, PW-1 denied the suggestion that he did not mention the bill number in his initial complaint, and he admitted that several business transactions had taken place between the parties. He denied the suggestion that the outstanding amount was Rs. 1,40,380/- whereas he had filed



the cheque amount of Rs.1,41,000/-.He clarified that one of the cheques bore a date prior to the transaction date as it was towards an earlier outstanding liability. He denied that the cheques were retained by him without authority or that the bank return memos were procured falsely.

9. PW-2 Sh. *Puran Chand Bhargava*, Record Clerk, Oriental Bank of Commerce, Sadar Bazar, produced a copy of the bank statement, which was held to be inadmissible, and his examination remained deferred.

10. PW-3 Sh. *Ashok Kumar*, Clerk-cum-Accountant, Oriental Bank of Commerce, Sadar Bazar, deposed that he brought the statement of account bearing No. CC-179 pertaining to *M/s J.K. Iron & Steel Manufacturing Co.*, which was exhibited as Ex. PW-3/A. He stated that the five cheques bearing Nos. 174637 to 174641, were credited in the said account but were returned unpaid from Oriental Bank of Commerce, Wazirpur Branch, with the endorsement "*Funds Insufficient*". The corresponding return memos were exhibited as Ex. PW-1/H to Ex. PW-1/Q. He further proved the clarification received from the Wazirpur Branch which showed that the accused had a balance of only Rs.241.99/- in his account on 25.08.1993. In cross-examination, PW-3 stated that the cheques were returned on 26.08.1993, as reflected at point 'X' in Ex. PW-3/A.

11. The statement of the accused was recorded under Section 313 Cr.P.C., wherein he denied the allegations and claimed that all payments were made in advance. He stated that blank cheques were issued in advance, payment was stopped, and the amount was withdrawn from the bank. He further asserted that no goods were supplied by the complainant and that the case was falsely instituted against him.



12. DW-1 Sh. *Jai Pal Verma* deposed that he was working at Z-14, Loha Mandi, Naraina, since 1993. He stated that prior to his arrival, the accused was conducting business from the said premises; however, thereafter, the accused neither carried on business nor resided at the said address. In cross-examination, he admitted that he had not purchased the premises and was unable to state whether two firms could carry on business from the same address.

13. DW-2 Sh. *Rishab Jain* deposed that he had been working with the complainant firm since the year 1990. He stated that the complainant firm was a proprietorship concern and had business dealings with the accused. He further stated that the document Mark-X was not in his handwriting and he could not identify the person who prepared it. He admitted that the sales were effected against ST-35 forms, for which information was required to be furnished to the Sales Tax Department.

14. DW-3 Sh. *Harish Chand Gupta* (accused himself) deposed that he used to make advance payments to the complainant and that the complainant maintained the accounts. He relied upon a statement of account of the year 1991 marked as Mark-X, claiming that the original was taken by the complainant after obtaining his signatures. He stated that the document was in the handwriting of the complainant or his staff. In cross-examination, he denied the suggestion that he had deposed falsely or that Mark-X did not pertain to the complainant.

15. Learned counsel for the appellant has submitted that there were regular transactions with the firm for which he had issued blank cheques to the respondent. Further, he contends that when the appellant was not supplied the goods, they had stopped the payment. Learned counsel further contended that the complainant had an the outstanding liability of Rs. 40,000/-.



16. *Per contra*, Learned counsel for the respondent submitted that the appellant had issued five cheques aggregating to Rs.1,41,000/- towards discharge of a legally enforceable liability arising out of commercial dealings between the parties. It was contended that the Trial Court had correctly appreciated the evidence on record and that no interference with the judgment of conviction was warranted.

17. I have carefully perused the judgment of conviction, the evidence led before the Trial Court, and the defence raised.

18. It is well settled that once the issuance of the cheque and its dishonour are established, the statutory presumption under Section 139 of the Negotiable Instruments Act arises in favour of the complainant that the cheque was issued towards discharge of a legally enforceable debt or liability. The defence taken by the appellant that the cheques were issued as blank cheques in advance, that payment was subsequently stopped, or that the complainant failed to supply goods, does not, by itself, rebut the statutory presumption unless supported by cogent and credible evidence. The defence taken by the appellant that the cheques were issued in advance or that no goods were supplied is a mere assertion, unsupported by cogent evidence, and is insufficient to rebut the statutory presumption. The complainant, on the other hand, proved the outstanding liability by producing the bill raised for a sum of Rs.1,00,380/- and the corresponding statement of account, which reflected subsisting dues payable by the appellant. Further, in terms of dishonouring the cheque, the bank witnesses conclusively proved that the cheques were returned unpaid with the remarks “*Stop Payment*” and that there were insufficient funds in the account of the appellant to honour the cheques. This fact also finds corroboration from the admission made by the



appellant in his statement under Section 313 Cr.P.C., wherein he acknowledged having stopped payment and withdrawn the amount from the bank. With respect to the statutory requirements of notice and limitation, the evidence on record establishes that the cheques were dishonoured on 26.08.1993 and the statutory demand notice was dispatched on 30.08.1993. The acknowledgment cards show that the notice was duly received by the appellant on 02.09.1993. Despite expiry of the statutory period of fifteen days, no payment was made, and the complaint was instituted on 23.09.1993.

19. In view of the aforesaid discussion, this Court finds that all the essential ingredients of the offence under Section 138 of the Negotiable Instruments Act stand duly proved. No perversity, or material irregularity is discernible in the appreciation of evidence by the Trial Court. Accordingly, the conviction of the appellant under Section 138 of the Negotiable Instruments Act is affirmed.

20. As per the said Nominal Roll, the appellant had remained in judicial custody for a period of 5 months in connection with the present complaint case. It is also noted from the Nominal Roll that the appellant was aged 61 years in the year 2002. As on date, the appellant would be over 83 years of age. The appeal has remained pending for more than two decades.

21. This Court, keeping in mind the mitigating circumstances noted, such as the age of the appellant, the time that has lapsed since filing this appeal and the period of incarceration undergone by the appellant, is of the considered opinion that the ends of justice would be met by modifying the sentence of imprisonment to the period already undergone, while maintaining the conviction. Section 138 stipulates award of substantive sentence or fine or both.

22. Accordingly, in the peculiar facts of the case, while affirming the conviction



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of the appellant under Section 138 of the Negotiable Instruments Act, the sentence is modified only to the period of incarceration already undergone by the appellant.

23. The appeal is partly allowed to the extent indicated above and stands disposed of.

24. The bail bonds and sureties stand accordingly discharged.

25. This Court records its appreciation for the assistance rendered by the learned *Amicus Curiae*, Mr. Himanshu Anand Gupta, Advocate.

26. A copy of this judgment be sent to the concerned Trial Court and the concerned Jail Superintendent.

**MANOJ KUMAR OHRI
(JUDGE)**

DECEMBER 16, 2025

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