



2025:CGHC:16436

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 425 of 2024

Judgment Reserved on : 21.01.2025

Judgment Delivered on : 08.04.2025

- Tulshi Steel Traders Proprietor Pushpendra Kesharwani, Aged About 35 Year S/o Shri Sunderlal Kesharwani R/o Purana Dhamtari Main Road Near Durga Mandir Dunda Raipur District Raipur C.G.

--- **Appellant**

versus

- Purva Construction Proprietor -Mitrabhan Sahu R/o Second Floor Sakina Mention Complex In Front Of Milinium Plaza Bastal Road Raipur District Raipur C.G.

--- **Respondent**

ACQA No. 194 of 2024

- Tulshi Steel Traders Proprietor Pushpendra Kesharwani Aged 35 Year, S/o Shri Sunderlal Kesharwani R/o Purana Dhamtari Main Road Near Durga Mandir Dunda Raipur, District : Raipur, Chhattisgarh

--- **Appellant**

Versus

- Purva Construction Proprietor - Mitrabhan Sahu R/o Second Floor Sakina Mention Complex in Front Of Milinium Plaza Bastal Road Raipur, District : Raipur, Chhattisgarh

--- **Respondent**

For Appellant(s) : Mr. Ajay Mishra, Advocate

For Respondent(s) : Mr. Shubham Dwivedi, Advocate appears on

behalf of Mr. Atul Kumar Kesharwani, Advocate

Hon'ble Shri Justice Narendra Kumar Vyas
(CAV Judgment)

1. Since common question of law and facts involved in both the cases are one and the same, therefore, they are heard analogously and are being disposed of by this common order.
2. The brief facts of the case are as under:-
- a. The details of the case number of the trial Court, cheque number, amount, date of dishonor, date of returning memo, and date of issuance of notice to the accused by the complainant are given in the tabular form as under:-

Complaint Case No. and ACQA No.	Cheque No.	Amount (in Rs.)	Date of Dishonor of Cheque	Date of Receipt of Returning Memo by the complainant	Date of issuance of notice
Complaint Case No. 2242/2017 & ACQA No. 425/2024	000275	67,640/-	18.05.2017	18.05.2017	07.06.2017
Complaint Case No. 2243/2017 & ACQA No. 194/2024	000269	1,70,600/-	08.05.2017	08.05.2017	07.06.2017

- b. As per details mentioned above the complainant has filed complaint under Section 138 of Negotiable Instruments Act, 1881 (in short “N.I. Act, 1881”) mainly contending that the complainant is doing the business of cement, bricks and supply of construction materials. Due to relationship with the complainant, the accused has taken material for the amount of Rs. 67,470/- and 1,70,600/- and to discharge the said liability he has given the said cheques which have been dishonored due to insufficient fund as per the

description mentioned in the above table. The complainant has sent a legal notice to the accused and despite the service of notice neither the amount was paid nor any reply was given, which has necessitated the complainant to file a complaint.

c. The complainant to substantiate his case has examined himself by way of an affidavit as provided under Section 145 of N.I. Act, 1881 and exhibited documents mainly the dishonored cheque (Exhibit P/1), returning Memo (Exhibit P/2), Registered Notice (Exhibit P/3), Postal Receipt (Exhibit P/4), and Bill (Exhibit P/5) in both the cases. The accused has not examined any witness, but in his evidence under Section 313 of Cr.P.C. the accused has taken plea of false implication and has stated that he has given the cheques towards security advance for supply of the material, but the complainant has not supplied the material and has misused the same. The learned trial Court vide impugned order has dismissed the complaint. The learned trial Court while dismissing the complaint has recorded its finding that neither in the forwarding memo there was seal of the bank, signature of the bank officer nor any bank officer has been examined which is violation of Section 146 of the N.I. Act, 1881 and accordingly, it has dismissed the case. The learned trial Court while dismissing the complaint has recorded its finding that the amount mentioned in the dishonored cheques has not been paid by the accused within the time prescribed under Section 138 of the N.I. Act, 1881 and has held the cheques were given towards debt or liability, but dismissed the complaint and acquitted the accused. Being aggrieved with the order passed by the learned trial Court the acquittal appeals have

been preferred by the appellant.

3. Learned counsel for the appellant would submit that the learned trial Court though it has held that the complainant has not paid the amount of the cheques and the said cheques were given towards consideration of cement and iron rod from the complainant, thus, it has recorded its finding that the cheques were given towards debt and liability, but has committed illegality in dismissing the complaint on the count that return memo does not bear the signature of the bank stamp, therefore, the finding recorded by the learned trial Court that it cannot be a banking record as per Section 146 of the N.I. Act, 1881 is also illegal, erroneous and would pray for allowing the appeal.
4. Per contra learned counsel for the respondent would submit that learned trial Court after appreciating the evidence and material on record has recorded its finding that the complainant has not proved the case beyond reasonable doubt that cheques were given in lieu of any liability and it has rightly dismissed the complaint. He would further submit that as per Section 146 of the N.I. Act, 1881 until and unless the bank returning memo bears seal and signature of the bank it cannot be termed as record under the N.I. Act, 1881. Thus, he would submit that the returning memo is very well generated and fabricated document created by the complainant. As such the trial Court has not committed any illegality in not believing upon the said documents and would pray for dismissal of the acquittal appeal.
5. I have heard learned counsel for the parties and perused the records.

6. From above submission the point required for determination of this Court is:

Whether the trial Court was justified in dismissing the complaint by not relying upon the cheque returning memo as it does not bear seal and signature of the bank official to attract Section 146 of the N.I. Act, 1881?

To appreciate the point framed by this Court, it is expedient for this Court to go through the provisions of Section 146 of the N.I. Act, 1881, which is reproduced below:

“Section 146 of the N.I. Act, 1881:

“146. Bank's slip prima facie evidence of certain facts.—The Court shall, in respect of every proceeding under this Chapter, on production of Bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.”

7. The learned trial Court has already held that the cheques were given towards liability not as security as the accused is unable to rebut the same and even to substantiate his stand that the cheques have been given towards security, no permissible evidence has been adduced. Thus, the presumption under Section 139 of N.I. Act, 1881 is held to be in favour of complainant, therefore, merely due to no seal and signature of cheque return forwarding memo by the bank, the finding of the trial Court that no presumption regarding dishonor of cheques can be drawn, is misconceived. Even otherwise, the purpose of cheque return memo is to give the information of holder of the cheques that his cheques on presentation could not be encashed due to various

reasons as mentioned in the cheques return memo. Even as per Section 146 of N.I. Act, 1881, the cheques return on presentation presumed the fact of dishonor of cheques unless and until such fact is disapproved. It is pertinent to mention here that neither Section 138 nor 146 of the N.I. Act, 1881 prescribed any particular form of cheque return memo, it is a nothing but a mere information given by the due holder of a cheques that cheques have been returned as unpaid. If the cheque return memo is not bearing any official stamp of the bank, it does not render the cheque return memo as invalid or illegal. The cheque return memo is not document which is required to be covered under Bankers Book (Evidence Act), 1891 if there is any infirmity in the cheques return memo, it does not render entire trial under Section 138 of N.I. Act, 1881 as nullity. The Hon'ble High Court of **Delhi in case of Guneet Bhasin Vs. State of NCT of Delhi & Anr. & Ors. In CRL.M.C. 4100/2022 & CRL.M.A. 16919/2022(Stay)** has taken same view.

8. High Court of Allahabad in case of **Mohd. Yunus Malik Vs. State of U.P. and Another** in application under Section 482 No. 41434 of 2022 in Neutral Citation no. **2023:AHC:140834** relying upon the judgment of Delhi High Court in case of **Guneet Bhasin Vs. State of NCT of Delhi and Others** in paragraph 13 has held as under:

“From perusal of the same, it is apparently clear that if the cheque return memo is not bearing any official stamp of the bank, it does not render the cheque as invalid or illegal. Further, if there is any infirmity in the cheque or letter, it does not render entire trial under Section 138 of Act, 1881 as nullity.”

9. The High Court of Madras in case of **India Cements Investments**

Services Limited Vs. T. P. Nallusamy in Crl. A. No. 13 of 2014

Neutral Citation No. **2017(1) MLJ(CrI) 689** in paragraph 56 reads as under:

“56. A perusal of the Judgment of the First Appellate Court in C. A. No. 1 of 2013 dated 08.11.2013 shows that the First Appellate Court had observed at paragraph 10 that in Ex. P7 -Cheque, it was written as ‘21.1.2000’ and the last ‘0’ was corrected as ‘8’ mention of on what date they were presented for collection. Moreover, the First Appellate Court went on to add that to prove the written memos filed, the HDFC Bank Manager was not examined to show how much amount was available in Respondent/Accused Account. In this connection, though a stand is taken on behalf of the Appellant/Complainant that as per Section 146 of the Negotiable Instruments Act, the Manager of the Bank need not be examined to speak about the written of three cheques etc., this Court is of the considered opinion that the Appellant/Complainant ought to examine the concerned Bank Manager to substantiate his version of the case, In fact, the evidence of the Bank Manager in favour of the Appellant/Complainant will strengthen its case.”

10. Considering the fact and law on the subject, it is quite vivid that though the learned trial Court has recorded its finding that the cheques were given towards liability has not committed any illegality, as such, these findings are affirmed, so far as other finding that cheque forwarding memo does not bear the seal and signature of bank official, as such presumption under Section 138 of N.I. Act, 1881 cannot be raised, is misconceived and deserves to be set aside, and accordingly it is quashed.
11. Consequentially, the matter is remitted back to the trial Court only to prove that cheques were presented before the bank and it has been dishonored due to “insufficient funds” in the account by examining the officer of the bank alongwith records maintained in the bank including physical, computer generated record duly authenticated by the officer of the bank who is well aware of the

affairs of dishonor of the cheques of the bank.

12. Consequentially, the appeal is partly allowed and the matter is remitted back to the trial Court for deciding the case as per the direction given by this Court in forgoing paragraphs. Since the parties have already appeared before this Court, no fresh notice is required to be issued to the parties. The complainant and accused shall appear before the concerning trial Court on **09.05.2025** and thereafter, trial Court will make endeavor to complete the trial within 9 months from their first appearance i.e. 09.05.2025.

Sd/-
(Narendra Kumar Vyas)
Judge

Manish