

continuous appointment. The appellant and respondents Nos. 5 and 6 are posted in different districts. They do not as such, have any *inter se* seniority. In any event, the appellant having been deputed to the Police Training College, Madhuban in August, 1988 had not completed the requisite service of three years as required under rule 19.22 and was thus not eligible to be deputed for the Lower School Course when respondents Nos. 5 and 6 had been sent. The claims have to be considered in accordance with the rules. This was done and the appellant had failed only on account of the fact that he had not completed the requisite period of service at the Police Training College, Madhuban.

(5) Mr. Balhara also contends that rule 19.22 has no application. This contention is based on the ground that the rule uses the expression "school" while in Haryana, there is only a Police Training College. Admittedly, there is only one institution in the whole State of Haryana where the training for the Lower School Course is imparted. This institution, whether named as a college or a school, is the only one to which the provisions of rule 19.22 apply. We, therefore, find no basis for the contention that the provision of the rule is not attracted. Even if we were to assume that the provisions of rule 19.22 are not attracted, the appellant's interest would not be promoted in any manner whatsoever. In that situation, he will not be entitled to be considered or deputed under any provision.

(6) We thus find no merit in this appeal which is dismissed. However, in the circumstances of the case, we leave the parties to bear their own costs.

R.N.R.

*Before Jai Singh Sekhon, J.*

ANIL K. MEHRA AND OTHERS,—*Petitioners.*

*versus*

HANS RAJ,—*Respondent.*

*Criminal Misc. No. 13631-M of 1990.*

29th August, 1991.

*Negotiable Instruments Act, 1881 as substituted by Act 66 of 1988 with effect from 1st April, 1989—Ss. 138 & 142—Cheque dishonoured with the remarks "exceeds arrangements" i.e. on account of lack of insufficient funds—After the coming into force of substituted S. 138 with effect from 1st April, 1989 complaint filed after*

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*servng notice—Defence that issuance of cheque was prior to 1st April, 1989 does not absolve criminal liability—starting point of commission of offence is date of dishonouring—Hence, date of issuing cheque is immaterial for constituting offence punishable under S. 138.*

*Held, that a perusal of clause (b) of S. 142 of the Negotiable Instruments Act clearly shows that the limitation for filing such complaint which has been prescribed by the legislature would start running from the date from which the cause of action arises under clause (c) of the proviso to S. 138, which in turn implies that the legislature in its wisdom has made the condition figuring in clause (c) of S. 138 of the Act sine qua non for taking cognizance of such offence. Thus by no stretch of imagination the act of issuing cheque can be considered as starting point of commission of offence. Thus, the reading of the main body of S. 138 alongwith the proviso as well as the provisions of S. 142 leaves no doubt that the date of issuing the cheque is immaterial for constituting the offence punishable under S. 138 of the Act. (Para 10)*

*Petition under section 482 Cr. P. C. praying that the complaint Annexure P-1, Order of summoning Annexure P-2 and the order of the learned Sessions Judge Annexure P-3 be set aside and quashed in the interest of justice.*

*It is further prayed that proceedings pending before the learned Trial Magistrate may kindly be stayed during the pendency of the petition before this Hon'ble Court in the interest of justice.*

*In complaint under section 138 of the Negotiable Instrument Act as amended by the Banking Public Financial Institutions and Negotiable Instrument Laws (Amendment) Act, 1988 on 19th May, 1989.*

*Hemant Kumar with S/Shri Rajesh Kumar and Rajesh Garg, Advocates for the Petitioners.*

*Arun Jain, Advocate, for the Respondent.*

#### JUDGMENT

*J. S. Sekhon, J.* ...

*(1) Criminal Misc. Nos. 11514-M, 13633-M and 13635-M of 1990 shall also be disposed of along with this miscellaneous petition (No. 13631-M of 1990), as these involve the same controversy inter-parties.*

*(2) The main controversy involved in these petitions is whether the offence under section 138 of the Negotiable Instruments*

Act, 1881 (hereinafter referred to as 'the Act'), figuring in Chapter XVII, substituted,—*vide* Act 66 of 1988, which came into force with effect from 1st April, 1989, would be deemed to have been committed on the day of drawing a cheque or on the date of dishonouring of a cheque on account of lack of sufficient funds in the accounts of the drawer as that exceeds the amount range to be paid from that account.

(3) The brief resume of facts relevant for the disposal of this petition is that Anil Kumar Mehra, Raj Kumar Mehra and Krishan Kumar Mehra accused are the partners of the firm Messrs Mehra Enterprises. This firm took loan from Hans Raj, complainant and, Anil Kumar Mehra accused-petitioner issued ten cheques for Rs. 1,033.33 each in favour of Hans Raj, complainant and drawn on the Central Bank of India, Sector 22-C, Chandigarh. Two other cheques were also issued by him, but these are not relevant in this case as the validity period had already expired before filing the complaint. The complainant presented all these ten cheques to the Bank for their encashment on 11th April, 1989, but all these cheques were received back on 17th April, 1989 with the remarks "Exceeds arrangement",—*vide* Bank memo dated 12th April, 1989. The complainant then issued notice dated 20th April, 1989 calling upon the firm of the accused to pay the amount of the cheques within 15 days of the receipt of the notice. The accused-firm received the notice on 22nd April, 1989, but instead of paying the amount, gave reply dated 29th April, 1989 through their counsel disputing its criminal liability under section 138 of the Act, which resulted in filing the complaint in the Court. The trial Court,—*vide* order dated 10th August, 1989 summoned the accused-petitioners to face trial for the offence punishable under section 138 of the Act. The petitioners went in revision against that order, which was dismissed by the learned Additional Sessions Judge, Chandigarh, by holding that the provisions of section 138 are *prima facie* attracted to the facts of the present case as the cheques were dishonoured after coming into force the above referred provisions. Under these circumstances, the accused-petitioners had knocked the doors of this Court under the provisions of section 482 of the Code of Criminal Procedure for quashing the complaint and orders of the above referred two lower Courts.

(4) In the remaining petitions, the controversy is the same except that the amount and the number of cheques issued by the accused-petitioners in favour of the complainant varies.

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(5) Mr. Hemant Kumar, the learned counsel for the petitioner contended that as all the cheques were admittedly issued prior to 1st of April, 1989, before the provisions of section 138 of the Act came into force, it cannot be said that the accused committed an offence on the date of issuing these cheques as these provisions were not then existing. In other words, his line of argument is that the date of issuing the cheque is main ingredient of the offence under section 138 of the Act and that dishonouring of these cheques after coming into force these provisions would be of no consequence. He has further elaborated his argument contending that the formality of serving notice within 15 days of the receipt of information from the bank about dishonouring of the cheque is only to make aware the drawer of the cheque in this regard and to arrange payment within 15 days of the receipt of such notice. Reliance in this regard has been placed upon the decision of A. P. Chowdhri, J. in *Steel Pipe Industries Ltd. v. Satya Naariyan Mahawar* (1).

(6) Mr. Arun Jain, the learned counsel for the respondent, on the other hand, maintains that the ingredient of the offence is the dishonouring of the cheque on account of lack of sufficient funds in the account of the drawer or the cheque amount being beyond the arrangement with the Bank and the failure of the drawer to make the payment despite notice by payee in this regard within 15 days of the receipt of information from the Bank. Thus he maintains that the act or date of drawing the cheque is immaterial because it is not the essential ingredient of the offence punishable under section 138 of the Act. Reliance in this regard has been placed on Single Bench judgment of the Kerala High Court in *Paramjit Singh v. Job*, (2) as well as on the Division Bench of that Court in *Prithviraj v. Mathew Koshy* (3).

(7) It is not disputed that a person can be accused of the commission of a certain offence if his act or omission is an offence according to the law prevalent. The definition of offence figuring in clause (n) of Section 2 of the Code Criminal Procedure, 1973, reads as under :—

“S. 2 (n) “offence” means any act or commission made punishable by any law for the time being in force and includes any act in respect of which a complaint may

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(1) 1990 (2) P.L.R. 269.

(2) 1989 PAP 461, Kerala.

(3) 1991 ISJ (Banking), 312.

be made under Section 20 of the Cattle Trespass Act, 1871 (1 of 1871)".

Similar is the definition of offence in sub-section 38 of section 3 of the General Clauses Act, 1897. It reads as under :

"S. 3(38) "offence" shall mean any act or omission made punishable by any law for the time being in force."

Thus, there is absolutely no doubt that a person can commit an offence by an overt act or by omission against any provision of law, which is in force at that time. The matter does not rest here as the liability of a person for the commission of offence has been restricted to the then law in force by frame of the Constitution under clause (1) of Article 20, which read as under :—

"20. *Protection in respect of conviction for offence* (1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subject to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

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(8) The question then arises as to which act or omission of an accused person had been made punishable under section 138 of the Act. The provisions of section 138 of the Act run as under :—

"S. 138. *Dishonour of cheque for insufficiency, etc. of funds in the account.*—Where 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 of that account for the discharge, in whole or in part, any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing at the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which

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may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both :

Provided that nothing contained in this section shall apply unless :—

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier ;
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid ; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

..... ”

A bare glance of the above referred section leaves no doubt that necessary ingredients of the offence are—

- (i) that the cheque is drawn on a bank for the discharge of any legally enforceable debt or other liability ;
- (ii) the cheque is returned by the bank unpaid ;
- (iii) the cheque is returned unpaid because the amount available in that account is insufficient for making the payment of the cheque ; or that the amount of the cheque exceeds the amount arranged to be paid from that account by an agreement made with the bank ;
- (iv) that the payee gives a notice to the drawer claiming the amount within 15 days of the receipt of the information by the bank ; and
- (v) the drawer fails to make payment within 15 days of the receipt of notice.

(9) Thus, the above-referred break-up of the provisions of section 138 of the Act leaves no doubt that the date of issuing the cheque is not an essential ingredient of the offence as the wording of section 138 lays stress on the date of dishonouring of the cheque drawn by a person in discharge of legally enforceable debt or other liability and the bank dishonours the same due to lack of insufficient funds to honour the cheque or it exceeds the amount of the drawer with the Bank. This section further enjoins upon to provide the presentation of the cheque within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier and after dishonouring the payee or holder of the cheque in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank in this regard and the drawer fails to make the payment of the amount of money to the payee or as the case may be, to the payee within 15 days of receipt of such notice.

(10) The provisions of section 142 of the Act limiting the scope of taking cognizance of offence provide as under :

“S. 142. *Cognizance of offences.*—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).—

- (a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque ;
- (b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138 ;
- (c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138.

The perusal of clause (b) of section 142 reproduced above, clearly shows that the limitation for filing such complaint which has been prescribed by the legislature would start running from the date from which the cause of action arises under clause (c) of the proviso to section 138, which in turn implies that the legislature in its wisdom has made the condition figuring in clause (c) of section

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138 of the Act *sine qua non* for taking cognizance of such offence. Thus by no stretch of imagination the act of issuing cheque can be considered as starting point of commission of offence. Thus, the reading of the main body of section 138 along with the proviso as well as the provisions of section 142 referred to above leaves no doubt that the date of issuing the cheque is immaterial for constituting the offence punishable under section 138 of the Act.

(11) The observations of the Single Bench of the Kerala High Court in *Paramjit Singh v. Job* (4), also support this conclusion. The view of the Single Bench was endorsed by the Division Bench of the Kerala High Court in *Prithviraj v. Mathew Koshy* (5).

(12) The observations of the Single Bench of this Court in *Satya Naraiyan Mahawar's case* (supra), relied upon by the learned counsel for the petitioner, are not applicable to the controversy in hand as there in controversy related to the application of the provisions or section 138 of the Act in a case where the cheque is returned unpaid by the bank on the ground of drawer's stopping the payment. Thus it was held by A. P. Chowdhri, J. that the provisions of section 138 of the Act are not applicable as that section relates only to the dishonouring of cheque on account of lack of sufficient funds in the account of the drawer or the amount of the cheque exceeds the arrangement made by the drawer with the bank.

(13) For the reasons recorded above, no interference is called for in the impugned order of the trial Court as well as the revisional Court. These petitions therefore, fails and are hereby dismissed.

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**R.N.R.**

*Before G. R. Majithia, J.*

**BHARPUR SINGH,—Petitioner.**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents.**

*Civil Writ Petition No. 1419 of 1987*

15th March, 1991.

*Punjab Government National Emergency (Concession) Rules, 1965—Rl. 4(i) (ii) & (iii)—Seniority—Benefit of military service—Petitioner, an ex-serviceman, appointed as clerk on the recommendation of the S.S.S.B., Punjab in the Sub-Office Cadre on purely*

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(4) Crl. M. 978 of 1989, decided on 18th October, 1989.

(5) 1991 ISJ (Banking) 312.