IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No(s). 1760-1761 OF 2022
(@ SLP (Crl) No(s). 1805-1806 of 2020)

YOGESH JAIN **Appellant(s)**

VERSUS

SUMESH CHADHA **Respondent(s)**

O R D E R

Leave granted.

These appeals are at the instance of the original complainant of a complaint lodged under Section 138 of the Negotiable Instruments Act, 1881 (in short "the N.I. Act") and are directed against the orders passed by the High Court of Punjab and Haryana at Chandigarh dated 15.01.2020 in the CRM-M No. 27736 of 2019 by which the High Court quashed the order passed by the Judicial Magistrate, Ist Class, Ludhiana summoning the accused for the offence punishable under Section 138 of the N.I. Act and the order passed by the High Court dated 29.01.2020 in the CRM No. 3389 of 2020 (recall

application) in CRM-M No. 27736 of 2019 by which the High Court rejected the application for recalling of the above order dated 15.01.2020 passed in the CRM-M No. 27736 of 2019.

The respondent (original accused) although served with the notice issued by this Court yet has chosen not to remain present before this Court either in person or through an advocate and oppose these appeals.

Having heard the learned counsel appearing for the appellant and having gone through the materials on record, more particularly the impugned order, we find that the High Court thought fit to quash the proceedings on the premise that on the date of summoning the accused the legally enforceable debt was time barred.

The High Court seems to have proceeded on the footing that there is no averment in the entire complaint as regards any kind of acknowledgment of the said debt by the accused within the period of three years i.e. within the limitation period of recovering the debt.

It appears *prima facie* from the materials on

record that the loan was advanced sometime in the year 2011. The cheque in question duly issued by the accused for the discharge of the debt is dated 01.11.2018 and complaint for the offence under Section 138 of the N.I. Act was lodged on 14.01.2019. It appears that the High Court has gone by the date of the loan transaction to be precise the year of the loan transaction. If a cheque is issued on 01.11.2018 for the discharge of the debt incurred in the year 2011 then *prima facie* it could be said to be an acknowledgement of the debt. This aspect needs to be re-considered by the High Court in its true perspective. The High Court in its impugned order has observed as under:-

> ***"There is no averment in the entire complaint as regards any kind of acknowledgement of the said debt by the petitioner within the period of three years i.e. the limitation period to recover the debt. Thus, there being no acknowledgement by or on behalf of the accused, it cannot be said that the complaint filed in respect of the said debt was maintainable."***

Thus, what is sought to be conveyed by the High Court is that the acknowledgement of the debt

at the instance of the accused should have been within three years from the date of transaction and there is no averment in the complaint in this regard. We fail to understand such a line of reasoning by the High Court. We say so because the loan which was advanced of Rs. Five Lakh by the complainant to the accused was for a period of seven years. *Prima facie*, it appears that the liability towards repayment of the loan was to be discharged within a period of seven years. If that be so, then on what basis the initial first three years have been taken into consideration by the High Court for the purpose of counting the limitation. Perhaps what is in the mind of the High Court is that by the time, the cheque in question was issued the debt had become barred by limitation because no acknowledgement was obtained before the expiry of three years from the date of loan. However, as noted above, the understanding was to discharge the liability within a period of seven years. *Prima facie*, we are of the view that the period of limitation would start reckoning from the expiry of the period of seven years.

Once a cheque is issued and upon getting dishonoured a statutory notice is issued, it is for the accused to dislodge the legal presumption available under Sections 118 and 139 resply of the N.I. Act. Whether the cheque in question had been issued for a time barred debt or not, itself *prima facie,* is a matter of evidence and could not have been adjudicated in an application filed by the accused under Section 482 of the CrPC.

Besides the aforesaid, there is one more ground which has persuaded us to set aside the impugned order and remit the matter to the High Court. We are informed by the learned counsel appearing for the appellant that the complainant was not heard while disposing of the main matter by the High Court. It is for this reason that an application was filed by the appellant (complainant) before the High Court with a prayer to recall the main order and rehear the matter on its own merits after giving an opportunity to the complainant. However, such application for recall came to be rejected.

On both the aforesaid grounds, we set aside

the impugned order(s) passed by the High Court and remit the matter for fresh consideration on its own merits and after affording due opportunity of hearing to all the parties concerned.

The appeals are allowed.

.....J.
(S. ABDUL NAZEER)

.....J.
(J.B. PARDIWALA)

NEW DELHI
OCTOBER 10, 2022

ITEM NO.40 COURT NO.4 SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 1805-1806/2020

(Arising out of impugned final judgment and order dated 15-01-2020 in CRMM No. 27736/2019 29-01-2020 in CRM No. 3389/2020 in CRMM No. 27736/2019 passed by the High Court Of Punjab & Haryana At Chandigarh)

YOGESH JAIN Petitioner(s)

VERSUS

SUMESH CHADHA Respondent(s)

Date : 10-10-2022 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Petitioner(s) Ms. Sweta Rani, AOR
Mr. Anant Agarwal, Adv.
For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R
Leave granted.
The appeals are allowed in terms of the signed order.
Pending applications, if any, also stand disposed of.

(NEELAM GULATI) (KAMLESH RAWAT)
ASTT. REGISTRAR-cum-PS COURT MASTER (NSH)
(Signed order is placed on the file)