

A: 301C, PRESIDENT PLAZA, 166, RNT MARG, INDORE – 452001; M: 82889 11615



Supreme Court disallows amendment of the date of the Cheque

In the case of *Munish Kumar Gupta v. M/s Mittal Trading Company*, dated April 30, 2024, the Supreme Court of India dealt with crucial issues pertaining to the application of Section 138 of the Negotiable Instruments Act (NI Act), specifically regarding the amendment of the cheque date mentioned in the complaint. The Supreme Court's decision in this case has significant implications for the interpretation and application of Section 138 of the NI Act in such situations.

Factual Matrix

- The Respondent filed a complaint under Section 138 of the NI Act, read with Section 420 of the Indian Penal Code, 1860 ('IPC').
- The Respondent alleged that the Appellant had issued an account payee cheque dated 22.07.2010, bearing No. 732966, to discharge a financial liability.
- The Complaint was filed on 02.01.2013.
- However, during tendering of evidence before the Ld. Trial Court, the Respondent filed an amendment application dated 24.10.2017 to the Complaint, claiming a typographical error in mentioning the year of the cheque.
- The Ld. Magistrate initially denied the amendment, but the High Court allowed it through a judgment and order dated 04.01.2023.

Core Legal Issue

- Whether an amendment to the date of the cheque mentioned in the complaint can be allowed?

Supreme Court's Decision

- The Supreme Court reviewed the case where the date on the cheque was consistently recorded as 22.07.2010 from the notice demanding payment to the evidence stage.
- The court found that amending the date of the cheque to 22.07.2012, as requested by the Respondent, was unjustified because existing evidence supported the original date.
- The Supreme Court overturned the High Court's decision that allowed the complainant to amend the cheque date in the complaint.
- It was determined that the amendment request was made after the evidence stage had concluded, which the Supreme Court deemed unjustifiable.
- It was held that in a matter of the present nature, where the date is a relevant aspect based on which the entire aspect relating to the issue of notice within the time frame as provided under the NI Act, and also as to whether as on the date there was sufficient balance in the account of the issuer of the cheque would be the question, the amendment, as sought for, in the present circumstance, was not justified.
- As a result, the appeal was allowed, and all pending applications were resolved accordingly.

Outcome of the Case

- The Supreme Court's decision in the instant case highlights the importance of the date of the cheque in cheque dishonour cases and the limitations on amending such crucial details after the evidence stage.
- This judgment provides clarity on the relevance of the date of the cheque in determining the validity of complaints under the Negotiable Instruments Act, 1881.



Section 138 of National Instrument Act

Section 138 of the NI Act specifies the consequences and procedure for the dishonour of a cheque due to insufficient funds or exceeding the arrangement with the bank:

1. Offence: If a person's cheque is dishonoured because the funds in their account are insufficient or exceed the agreed amount, it is considered an offence
2. Penalty: The offender may be punished with imprisonment for up to two years, or a fine up to twice the amount of the cheque, or both
3. Conditions:
 - The cheque must be presented to the bank within six months from its date or its validity period, whichever is earlier.
 - The payee must demand payment in writing within thirty days of receiving notice of the dishonor from the bank.
 - The drawer of the cheque must fail to make payment within fifteen days of receiving the demand notice.
4. Explanation: "Debt or other liability" refers to a legally enforceable obligation.



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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. _____ OF 2024
(arising out of SLP(CrL.) No. 3040/2023)

MUNISH KUMAR GUPTA

Appellant(s)

VERSUS


M/S MITTAL TRADING COMPANY

Respondent(s)

O R D E R

1. Leave granted.
2. Heard the learned counsel for the appellant and perused the appeal papers.
3. The respondent, though served, has not chosen to appear and have his say in the instant proceedings.
4. From a perusal of the record, it is noted that the respondent had initiated a complaint under Section 138 of the Negotiable Instruments Act, 1881 read with Section 420 of the Indian Penal Code, 1860. In the complaint, it has been alleged that the appellant, to discharge its financial liability, had issued an account payee cheque dated 22.07.2010 bearing No.732966. The complaint had been filed on 02.01.2013. The matter has thus proceeded before the learned Magistrate. Subsequently, the respondent had tendered evidence before the learned Trial Court. At that stage, claiming that inadvertently a typographical error had arisen with regard to mentioning

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Nisha Khulbe
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the year of the cheque, the respondent had filed an application seeking amendment of the said complaint. The application for amendment was filed as late as on 24.10.2017. The learned Magistrate, having taken note of the said application for amendment, has through her Order dated 13.07.2018, arrived at the conclusion that the amendment, as sought for, would not be justified inasmuch as the said date, which is now sought to be corrected, has already been recorded in the evidence during cross-examination and also the relevant documents contain the same. The respondent, claiming to be aggrieved by the said order dated 13.07.2018, went before the High Court assailing the same. The High Court, through its judgment and order dated 04.01.2023, has allowed the said application and permitted the respondent to carry out the amendment. It is in that circumstance, the accused in the said case is before us assailing the judgment/ order of the High Court.

5. Having heard the learned counsel for the appellant, a perusal of the documents before us would indicate that from the very stage of issue of notice demanding payment, the date of the cheque had been indicated as 22.07.2010. Subsequent thereto, in the complaint as also while tendering the evidence, the date was recorded as 22.07.2010.

6. Presently, an application has been filed seeking amendment of the date of the cheque from 22.07.2010 to 22.07.2012 as also changing the date in the evidence recorded by the complainant to the same effect. It is in that light, at the first instance, the learned Magistrate considering the application has rightly concluded that even if the amendment/ correction is permitted in the complaint to indicate the date as 22.07.2012, the evidence supporting the case of the appellant contains the year as 2010, and as such, the amendment/ correction would not be justified.

7. As against such conclusion reached by the learned Magistrate, the High Court based on the discussion and applying the principles laid down in the various judgments cited therein by the learned counsel, allowed the said application to carry out necessary corrections/ amendment. However, while ultimately arriving at the conclusion as to whether the amendment is required to be permitted, the High Court had merely arrived at the conclusion that if such amendment is not permitted, it would prove fatal to the case of the complainant and as indicated, the respondent/complainant was only seeking the correction of the year. The High Court has, in fact, lost sight of the fact that the documents also contain the said date and the evidence recorded is also to the same effect.

8. Therefore, the opinion reached by the High Court to arrive at the conclusion that the mistake could be committed while taking copies from the computer would not be justified in the facts of the present case where the legal notice had indicated the date, and based on the same, the complaint had been initiated.

9. In a matter of the present nature, where the date is a relevant aspect based on which the entire aspect relating to the issue of notice within the time frame as provided under the Negotiable Instruments Act, 1881, and also as to whether as on the date there was sufficient balance in the account of the issuer of the cheque would be the question, the amendment, as sought for, in the present circumstance, was not justified.

10. Accordingly, the judgment and order dated 04.01.2023 passed by the High Court of Punjab and Haryana at Chandigarh is set aside.

11. The appeal is, accordingly, allowed.

12. Pending application(s), if any, shall stand disposed of.

.....J.
(A.S. BOPANNA)

.....J.
(SANJAY KUMAR)

New Delhi
30th April, 2024

ITEM NO.17

COURT NO.5

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 3040/2023

(Arising out of impugned final judgment and order dated 04-01-2023 in CRMM No. 37796/2018 passed by the High Court Of Punjab & Haryana At Chandigarh)

MUNISH KUMAR GUPTA

Petitioner(s)

VERSUS

M/S MITTAL TRADING COMPANY

Respondent(s)

Date : 30-04-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE SANJAY KUMAR

For Petitioner(s) Mr. Abhinav Shrivastava, AOR
Mr. Rahul Gupta, Adv.
Ms. Deepti Gupta, Adv.
Mr. Shivang Rawat, Adv.
Ms. Amrita Kumari, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(NISHA KHULBEY)
SENIOR PERSONAL ASSISTANT

(DIPTI KHURANA)
ASSISTANT REGISTRAR

(Signed order is placed on the file)