

<p>powers under Sections 25 to 28 (both inclusive), shall be deemed to have been made by the Tribunal and an appeal against such orders shall lie to the Appellate Tribunal.”</p>	<p>may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.</p> <p>(2) On receipt of an appeal under subsection (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under Sections 25 to 28 (both inclusive).”</p>
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14. The RDB Act is a special law. The proceedings are before a statutory Tribunal. The scheme of the Act manifestly provides that the Legislature has provided for application of the Limitation Act to original proceedings before the Tribunal under Section 19 only. The appellate tribunal has been conferred the power to condone delay beyond 45 days under Section 20(3) of the Act. The proceedings before the Recovery officer are not before a Tribunal. Section 24 is limited in its application to proceedings before the Tribunal originating under Section 19 only. The exclusion of any provision for extension of time by the Tribunal in preferring an appeal under Section 30 of the Act makes it manifest that the legislative intent for exclusion was express. The application of Section 5 of the Limitation Act by resort to Section 29(2) of the Limitation Act, 1963 therefore does not arise. The prescribed period of 30 days under Section 30(1) of the RDB Act for preferring an appeal against the order of the Recovery officer therefore cannot be condoned by application of Section 5 of the Limitation Act.

15. Insofar as **A.R. Venugopal @ R.Venugopal (supra)** is concerned, all that would be required to be noticed and observed is that the entire statutory scheme did not fall for consideration of the court in that case.

16. The appeals lack merit and are dismissed.

Appeal dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: Hari Pal Verma, J.

CRM-M-3813 of 2017

Decided on: 26.10.2017

Rajneesh Khanna

Petitioner

Versus

State of Haryana and another

Respondents

Present: Mr. Rajesh Gupta, Advocate for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Negotiable Instruments Act, 1881 (26 of 1881), Section 138 -- Indian Penal Code, 1860 (45 of 1860), Section 174-A – Code of Criminal

Procedure, 1973 (2 of 1974), Section 82 -- Cheque bounce case – Proclaimed person – Quashing of FIR-- Non-appearance of the petitioner before Ld. Trial Court is justified for the reason that he was not served at the given address -- After passing of the order, the petitioner has been granted anticipatory bail -- Matter compromised, complainant has withdrawn the complaint u/s 138 of the NIA Act -- Continuation of criminal proceedings against the petitioner under Section 174-A IPC would amount to abuse of process of law – Order declaring proclaimed person and subsequent FIR quashed.

(Para 1, 7,8)

Cases referred:

1. Vikas Sharma Versus Gurpreet Singh Kohli and another, CRM No. M-32465 of 2017 order dated 13.09.2017.

JUDGMENT

HARI PAL VERMA, J. (ORAL) –

1. Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of order dated 05.09.2016 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Ambala City in criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the NIA Act) titled as “Rajan Versus Rajneesh Khanna” vide which the petitioner has been declared as a proclaimed person and a direction was issued to the police to register an FIR under Section 174-A against the petitioner.

2. Prayer has also been made for quashing of resultant FIR No.387 dated 29.09.2016 under Section 174-A IPC registered at Police Station Ambala City (Annexure P-5).

3. Learned counsel for the petitioner states that the petitioner was never served in the case and, therefore, he could not appear before learned trial Court as he was not aware of the complaint under Section 138 of the NIA Act pending against him. However, when the petitioner came to know that he has been declared as a proclaimed person, he had moved an application for anticipatory bail before the Court of Session, Ambala. Vide order dated 02.01.2017 passed by learned Additional Sessions Judge, Ambala, the said application was allowed and the petitioner was granted anticipatory bail. He further contends that even in the reply submitted by the police in the application seeking anticipatory bail, it was admitted by the police that the petitioner was not residing at the given address.

4. Learned counsel for the petitioner has further argued that even otherwise, the matter has been compromised between the parties and the respondent No.2-complainant has withdrawn the very complaint under Section 138 of the NIA Act filed against the petitioner. He states that in these circumstances, the impugned order dated 05.09.2016 as well as the FIR in question along with all subsequent proceedings are liable to be quashed. In support of his contentions, he has relied upon the order dated 13.09.2017 passed by the coordinate Bench of this Court in **CRM No.M-32465 of 2017** titled as **Vikas Sharma Versus Gurpreet Singh Kohli and another**.

5. On the other hand, learned State counsel is fair enough to admit that in

view of the reply submitted by the police, the petitioner was not served in the case personally as during verification, it was found that the petitioner was not residing at the given address.

6. I have heard learned counsel for the parties.

7. Perusal of the record reveals that non-appearance of the petitioner before learned trial Court is justified for the reason that he was not served at the given address. Moreover, after passing of the impugned order dated 05.09.2016 by learned trial Court, the petitioner has been granted anticipatory bail by learned Additional Sessions Judge, Ambala vide order dated 02.01.2017. Therefore, in these circumstances particularly when the matter has been compromised between the parties and the respondent No.2-complainant has withdrawn the complaint under Section 138 of the NIA Act, continuation of criminal proceedings against the petitioner under Section 174-A IPC would amount to abuse of process of law.

8. Consequently, the impugned order dated 05.09.2016 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Ambala City is set aside and FIR No.387 dated 29.09.2016 under Section 174-A IPC registered against the petitioner at Police Station Ambala City (Annexure P-5) as well as all subsequent proceedings arising therefrom are quashed qua the petitioner.

Order accordingly.

SUPREME COURT OF INDIA

Before: Ranjan Gogoi & Navin Sinha, JJ.

Civil Appeal No.1300 of 2009

Decided on: 24.10.2017

Suraj Narain Kapoor and others

Appellants

Versus

Pradeep Kumar and others

Respondents

Transfer of Property Act, 1882 (4 of 1882), Section 58(c) – Mortgage by conditional sale -- Recitals reveal no reference to any loan taken or mortgage created with regard to any immovable property as security for such loan, much less to discharge any debt -- It does not evince the creation of a debtor and creditor relationship – On the contrary, the recitals are specific that the vendor was in need of money to run the vehicle purchased by him on hire, and was selling the shop to raise money for the purpose – If the amount was returned within a period of 5 years, either in installments or in lump-sum, the purchaser would execute the sale deed in his favour -- Document in question is sale deed with an option to repurchase and not a mortgage by conditional sale.

(Para 7-10)

Cases referred:

1. Bhoju Mandal vs. Debnath Bhagat, 1963 Supp (2) SCR 82.
2. Pandit Chunchun Jha vs. Sheikh Ebadat Ali and another, 1955 SCR 174.