(7) In totality of the facts and circumstances of this case, the Court is of the firm view that grounds for declining permission to go abroad, as mentioned by learned Special Judge, does not appear to be correct at all. Pendency of the case, as mentioned above, is no ground to decline permission to an individual to go abroad. Of course, steps have necessarily to be taken that a citizen abides by the undertaking of returning to the country given by him. It is this course, which is to be adopted in this case instead of declining permission to go abroad. Impugned order, Annexure P-6, dated 25th May, 2004 is, thus, *set aside*. The petitioner is permitted to go abroad for a month, as asked for by him, but on the condition that he will give an undertaking before the trial Judge that he would be present to face trial after a month from the date he goes abroad, as and when the same is fixed and in that connection, learned trial Judge would ensure that sufficient and proper security is taken from the petitioner so that he is unable to avoid the Court proceedings. On the undertaking, as mentioned above, and on furnishing the security, as may be ordered, to the satisfaction of the trial Judge, the petitioner shall be allowed to go abroad for a month.

(8) The petition is disposed of accordingly.

R.N.R.

Before K. S. Garewal, J.

JASPAL SINGH BEDI,—*Appellant/Complainant*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondent-Accused*

Crl. A. No. 20-DBA OF 1995

2nd November, 2004

Negotiable Instruments Act, 1881—S. 138—Dishonour of cheques on the ground of closure of bank accounts—Trial Court finding respondent guilty of offence under section 138—Ist Appellate Court acquitting accused while holding that a person could be held liable under Section 138 only if the cheque that was dishonoured had been issued on an account maintained by him—Whether drawing of a cheque on an account that had already been closed would absolve

the accused of criminal liability—Held, no—Returning of a cheque by bank with endorsement 'account closed' amounts to returning the cheque unpaid because of insufficent funds to honour the cheque—Appeal allowed, order of Ist appellate Court acquitting the accused set aside.

Held, that the learned appellate Court had analysed the phraseology used by the legislature while drafting Section 138 of the Act and concluded that if the account has been closed it means that the account was not being maintained by the accused. The word "maintained" meant cause to continue, continue one's action in, retain in being condition, position, attitude, relations, cause to continue in condition, possession of thing, etc. etc. Therefore, no offence was made out. The learned appellate Court was not justified in acquitting the respondent. Moreover, the respondent had not given any viable counter version of the transaction in order to convince the Court that two signed cheques belonging to him relating to two closed accounts that had earlier operated by him had fallen in the possession of the appellant which he had filled up and presented to the bank. The defence witnesses and the cross-examination of the complainant did not advance the case of the respondent in any way.

(Paras 12 & 15)

Parduman Yadav, Advocate, for the appellant.

K. S. Sidhu, Advocate, for the respondent.

JUDGMENT

K. S. Garewal, J.

(1) Jaswal Singh Bedi, the complainant in a case under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act'), has filed this appeal against the acquittal of Amarjit Singh by learned Additional Sessions Judge, Patiala, on May, 24, 1994.

(2) According to the appellant, Amarjit Singh had borrowed Rs. 50,000 from him. Amarjit Singh handed him a cheque dated July 21, 1992 drawn on Punjab and Sind Bank to repay the amount but the cheque was returned with the remarks that the account had been closed. Thereupon legal notice dated July, 24, 1992 was sent by Jaspal Singh Bedi's counsel to Amarjit Singh, but no re-payment was made. Respondent approached the appellant with the intervention of some respectable persons and assured the appellant that payment would

be made in due course with interest. The respondent again drew a cheque on August 2, 1992 on Indian Bank for Rs. 50,000. When this cheque was presented, it was again returned with the remarks that there were insufficient funds in the account. Notice of dishonour of the cheque was issued on August 27, 1992, but respondent did not clear the dues. Jaspal Singh Bedi filed complaint under Section 138 of the Act. Amarjit Singh was summoned to stand trial. *Vide* judgment dated February 9, 1994, learned Judicial Magistrate, Patiala found Amarjit Singh guilty of offence under Section 138 of the Act and sentenced him to undergo imprisonment for a period of six months and to pay fine of Rs. 55,000. In default of payment of fine, the accused was to undergo further imprisonment for a period of one month. Out of fine amount, Rs. 50,000 was paid as compensation.

(3) The accused filed an appeal. It was taken up by learned Sessions Judge, Patiala. Learned appellate Court was of the view that a person could be held liable under Section 138 of the Act only if the cheque that was dishonoured had been issued on an account maintained by him. However, if the account had been closed before the cheque was issued, it could not be said that the cheque had been drawn on an account maintained by the accused. Consequently, the Court held that if a person had already closed the account and then issued a cheque, it could not be said that the cheque had been drawn on an account maintained by him, therefore, offence under Section 138 of the Act could not be said to have been committed. Reliance had been placed by the appellate Court on the case titled **S. Prasanna** *versus* **Vijay Lakshmi, (1).**

(4) The sole question to be considered in this case would be whether drawing of a cheque on an account that had been closed would absolve the accused of criminal liability. Before proceeding to determine the exact legal position, it would be appropriate to consider the facts of the case.

(5) The appellant had pleaded in the complaint that the respondent had borrowed Rs. 50,000 from him and as repayment of the liability, respondent had issued cheque dated July 21, 1992 on Punjab and Sind Bank, Patiala. This cheque was dishonoured by the bank on the ground that the account had been closed. Legal notice was issued to the respondent on July 24, 1992. Thereafter, the respondent, with the intervention of the relatives, assured that he shall repay the amount and again handed over a cheque dated August 2, 1992 drawn on Indian Bank for Rs. 50,000. This cheque was also

(1) 1992 (2) R.C.R. 199 (Madras)

dishonoured on the ground that there were insufficient funds in the account. The appellant appeared as PW-3 and restated his case as given in the complaint and testified that first cheque had been dishonoured on the ground that the account had been closed and the second cheque was dishonoured due to insufficiency of funds.

(6) Pardeep Kumar—PW-1, of Indian Bank testified in respect of second cheque and stated that the cheque was presented for clearance on August 25, 1992 but the account had already been closed on November 21, 1987.

(7) Jaswinder Mohan Singh, PW-2, of Punjab and Sind Bank testified in respect of the first cheque and stated that the account had been opened on April 5, 1989 and closed on September 25, 1991.

(8) The appellant, when examined as PW-3, reiterated what he had stated in the complaint. On cross-examination, a suggestion was put to him that the accused used to visit one Bhupinder Singh and the said Bhupinder Singh might have received premium of LIC Policy from the accused by cheque. It was also suggested to the appellant that Bhupinder Singh may have been given blank cheques by the accused. The appellant denied these suggestions and also denied that he had received the two cheques in question from Bhupinder Singh. Surprisingly, the appellant also denied the suggestion that the cheques pertained to the period when the account had been closed.

(9) In his statement under Section 313 Cr. P.C., respondent did not put forth any specific counter story but was content by simply denying the various circumstances which have been put against him. In defence, Bhim Sen-DW-1 was examined who testified that respondent used to run cloth business in Shere-Punjab Market and had taken a shop on rent from Jai Mal, whose son Bhupinder Singh used to collect rent from him. Bhupinder Singh was employed with LIC and his wife Gurpreet Kaur was an agent. Bhupinder Singh had insured the respondent and used to collect cheques from him. Bhim Sen—DW-1 and respondent would give him blank cheques leaving the date, name and amount unfilled. The witnesses also testified that respondent had closed the account in Indian Bank. The respondent had no dealing with the appellant. The cross-examination by the appellant was directed to test the credit worthiness and veracity of the witness but in the absence of any counter version placed before the Court by accused-respondent, weight of the evidence of the two witnesses examined by him in defence, namely Bhim Sen—DW-1 and R.C. Ahluwalia DW-2, would be quite negligible.

(10) The respondent had been content with having established that both cheques had been drawn by him long after the accounts have been closed. The learned appellate Court also viewed the matter from the side of the respondent and concluded that "if a person had already closed his account with his Banker, and he issued the disputed cheque afterwards, it cannot be said that he had issued the cheque on the account maintained by him with a banker." The Court had also referred to the meaning of the word 'maintain' used in Section 138 of the Act and referred to its dictionary meaning before concluding, on the basis of **S. Prasanna** *versus* **Vijay Lakshmi** ***(supra),*** and holding that the verdict of conviction and sentence had to be set aside. Consequently, his plea was accepted and the respondent was acquitted.

(11) In support of his appeal against acquittal, learned counsel for the aggrieved complainant-appellant has submitted that the learned appellate Court had not applied the correct law. Reliance was placed on **NEPC Micon Ltd.** *versus* **Magma Leasing Ltd., (2),** wherein the judgment of Madras High Court in **S. Prasanna's case** *(supra)* was also considered and it was held that when a cheque is returned by bank with endorsement 'account closed', it would amount to returning the cheque unpaid because "the amount of money standing to the credit of that account is insufficient to honour the cheque", as envisaged under Section 138 of the Act.

(12) The learned appellate Court had analysed the phraseology used by the legislature while drafting Section 138 of the Act and concluded that if the account has been closed it means that the account was not being maintained by the accused. The word "maintained" meant cause to continue, continue one's action in, retain in being condition, position, attitude, relations, cause to continue in condition, possession of thing, etc. etc. Therefore, no offence was made out.

(13) The Supreme Court in NEPC Micon *(supra)* took the aid of decision in the case of **Seaford Court Estates Ltd.** *versus* **Asher, (3),** wherein Lord Denning, L.J. observed :—

> "The English language is not an instrument of mathematical precision. Our literature would be much poorer if it were. This is where the draftsmen of Acts of parliament have often been unfairly criticized. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of

(2) 1999 (2) R.C.R. (Criminal) 648
(3) 1949 (2) All ER 155

some or other ambiguity. It would certainly save the Judges trouble if the Acts of Parliament were drafted with divine prescience and prefect clarity. In the absence of it, when a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word as to give 'force and life' to the intention of legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do so as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

(14) Similar view to NEPC Micron *(supra)* has also been expressed in the cases titled **M/s Thirumala Agencies** *versus* **M/s Samala Mareppa and sons, (4)** and **S. R. Muralidar** *versus* **Ashok G. Y. (5).**

(15) Viewing the case from all angles, it must be held that the learned appellate Court was not justified in acquitting the respondent. Moreover, the respondent had not given any viable counter version of the transaction in order to convince the Court that two signed cheques belonging to him, relating to two closed accounts that had been earlier operated by him, and fallen in the possession of the appellant which he had filled up and presented to the bank. The defence witnesses and the cross examination of the complainant did not advance the case of the respondent in any way.

(16) On the basis of the above discussion, this appeal against acquittal is allowed, judgment of the appellate Court is hereby set aside and the conviction of the respondent by the trial Court is maintained.

(17) Respondent shall be taken into custody forthwith to undergo sentence awarded by the trial Court.

R.N.R.

(4) 2001 (3) R.C.R. (Criminal) 328
(5) 2001 (4) R.C.R. (Criminal) 228