

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CRM-A-1129-MA of 2015

Date of Decision: 31.08.2015

Devender Singh

....Applicant

Versus

Avtar Singh

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Paramjit Singh Jammu, Advocate
for the applicant.

DAYA CHAUDHARY, J.

This application has been moved under Section 378(4) Cr.P.C seeking leave to file the appeal against the judgment dated 31.03.2015 passed by the Judicial Magistrate Ist Class, Sirsa.

Briefly, the facts of the case, are that the applicant filed a complaint under Section 138 of the Negotiable Instruments Act against the respondent as the respondent had issued a cheque bearing No.218158 dated 31.05.2010 for an amount of ₹ 3,20,000/- of State Bank of India, Sirsa from his account. The said cheque was presented in the bank but the same was returned with remarks "insufficient funds" vide Memo dated 15.09.2010. A legal notice dated 28.09.2010 was served upon the respondent/accused through his counsel. Again on the assurance of respondent/accused, the cheque was presented to the Bank and it was

dishonoured. Thereafter, a second legal notice was issued on 11.11.2010 through his counsel. The complaint moved by the applicant was dismissed on the ground of limitation as it was not filed within a period of 45 days after issuing the legal notice and has been filed after a lapse of 63 days.

Learned counsel for the applicant submits that the complaint was filed within the period of limitation i.e from the date of issuance of second legal notice dated 11.11.2010 and hence, it cannot be considered as time barred. Learned counsel also submits that the accused-respondent assured the complainant to make payment on the second occasion and accordingly the cheque was presented in the bank again but it was again dishonoured. Thereafter, the legal notice was issued on 11.11.2010, which was well within a period of limitation. Learned counsel also submits that while passing the impugned judgment of acquittal, the trial Court has not considered the evidence of the complainant and non-speaking judgment has been passed without mentioning anything on merits.

Heard the arguments of learned counsel for the applicant and have also perused the judgment of acquittal, which is under challenge.

Admittedly, the complaint was filed by the complainant under Section 138 of the Negotiable Instruments Act after the date of issuance of second legal notice, whereas, initially a legal notice of demand was sent on 28.09.2010 to the accused respondent by the applicant-complainant through his counsel, which was received back. Thereafter, again a legal notice of demand was sent on 11.11.2010 and the complaint was filed after a period of 63 days.

Now the question for consideration before this Court is as to whether the period of limitation will be considered from the date of issuance of first legal notice or from the date of issuance of second legal notice. Section 138 of the Negotiable Instruments Act which is relevant to

decide the controversy, is reproduced as under :-

- (i) That a cheque must have been issued by the accused for the discharge, in whole or in part of any debt or other liability;
- (ii) The said cheque must have been dishonoured on account of “insufficiency of funds” or stop payment or exceeding arrangement etc.
- (iii) A legal notice must have been issued by the complainant to the accused within a period of 30 days of the receipt of information by him from the bank regarding return of the cheque as unpaid; and
- (iv) The drawer of the cheque must have failed to make payment of the amount of cheque within a period of 15 days of the receipt of the notice.”

As per provisions of Section 138(iii) of the Act, a legal notice must be issued by the complainant to the accused within a period of 30 days of the receipt of information by him from the bank regarding return of the cheque and in case, the drawer of the cheque has failed to make payment of the amount of cheque, in dispute, within a period of 15 days of the receipt of the notice, then the total period for filing complaint is 45 days.

In the present case, the complainant sent a legal notice to the accused/respondent on 28.09.2010 and thereafter again a legal notice was issued by him on 11.11.2010. The complainant himself has admitted in cross-examination that the date of issuance of first legal notice is 28.09.2010 and the complaint was filed on 01.12.2010, i.e within a period of 63 days, whereas, the complaint should have been filed within a period of 45 days. The complaint was dismissed by holding that it was not maintainable as per provisions of Section 138 of the Negotiable Instruments Act.

The controversy, in the case, in hand, is squarely covered by decision of Hon'ble the Apex Court in case ***Tameeshwar Vaishnav vs***

Ramvishal Gupta 2010(1) JT 119, wherein, it was held that the period of limitation is to be counted from the date of issuance of first notice and not from the date of issuance of second notice.

In another judgment, Hon'ble the Apex Court in **Sadanandan Bhadran v. Madhavan Sunil Kumar 1998(4) RCR (Criminal) 90** relied upon in **Tameeshwar Vaishnav's** case (supra), it was held that the cause of action to file complaint on non-payment of amount arises only once. Another cause of action would not arise on repeated dishonour on re-presentation.

In another judgment of Hon'ble the Apex Court in case **Econ Antri Limited vs Rom Industries Limited and another 2014(11) SCC 769**, it has been held that the Limitation Act is not applicable in case of Negotiable Instruments Act and there is no provision for condonation of delay.

Similar view has also been taken in another judgment of Hon'ble the Apex Court in case **Kirshna Texport and Capital Markets Limited vs Ila A. Agrawal and others 2015(2) RCR (Criminal) 949**.

In view of the facts and law position as discussed above, there is no merit in the submissions raised by learned counsel for the applicant and as such, the application for leave to file the appeal against the judgment of acquittal is declined.

31.08.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE