

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

Date of decision : 17.08.2015

(i) CRM M-13790 of 2013

Sri Nivasan & anr.

....Petitioners

V/s

M/s Khushi Jewellers & sons

....Respondent

(ii) CRM M-13791 of 2013

Sri Nivasan & anr.

....Petitioners

V/s

M/s Khushi Jewellers & sons

....Respondent

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Ashish Gupta, Advocate for the petitioners.

Mr. Veneet Sharma, Advocate for the respondent.

RAJAN GUPTA J.

This order will dispose of two petitions preferred by petitioners challenging complaint dated 30.11.2012 (Annexure P/5) and summoning order dated 30.11.2012 (Annexure P/7).

Complainant instituted a complaint against the petitioners on the ground that the cheques bearing no. 015298 & 15299 dated 12.10.2012 had been dishonored on the ground that 'Payment had been stopped by drawer'. Learned counsel for the petitioner has sought quashing primarily on the ground that complaint filed before expiry of fifteen days of the issuance of service of notice is not a complaint in the eyes of law. He has relied

upon judgment of the Apex court reported as ***Yogendra Pratap Singh vs. Savitri Pandey & anr. 2014(4) RCR (Criminal) 321.***

Learned counsel representing the respondent, however, submits that the issue whether notice was issued by the complaint within prescribed period is a matter of evidence and can be decided during trial. He has relied upon judgment of the Apex court reported as ***T.N. Newspring and Papers Ltd. vs. Lakshmi & anr. 2006(2) RCR (Criminal) 73.***

I have heard learned counsel for the parties.

There can be no dispute with the proposition that in complaint filed before the expiry of fifteen days from the date of receipt of notice under clause (c) of the proviso to section 138 of the NI Act is not maintainable. However, a question arises whether the summoning order passed by the trial court would be vitiated on this ground. A perusal of the impugned order shows that it has merely issued the process after complaint was filed. Instead of apprising the trial court of their stand, the accused have approached this court by way of instant quashing petition(s). It appears that vide order dated October 04, 2013, a coordinate Bench had directed that proceedings before the trial court would continue but final order would not be passed. In reply filed on behalf of the respondent, it has been stated that trial has almost concluded. Even statements of the accused under section 313 Cr.P.C. have already been recorded. Case is now fixed for defence evidence. However, in view of interim order, no further steps are being taken. In my considered view, no case for interference in inherent jurisdiction is made out. As trial is at its fag end, entire

evidence is available before the trial court to give findings on the basis of stand taken by the petitioners. Needless to observe that petitioners shall be at liberty to rely upon judgment in ***Yogendra Pratap Singh's*** case (supra) at the time of final arguments before the trial court.

Dismissed.

August 17, 2015

Ajay

(RAJAN GUPTA)
JUDGE