

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

**Crl. Misc. No. M-28724 of 2012
Date of decision : 25.08.2015**

Vishal Sharma

..... Petitioner

versus

Balkaran Singh

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

Argued by: Mr. Mansur Ali, Advocate
for the petitioner.

Mr. C.M. Munjal, Advocate
for the respondent.

ANITA CHAUDHRY, J. (ORAL)

The petitioner is seeking quashing of criminal complaint bearing No. 517/ 20.7.2012 RT No. 469/21.7.2-012(Annexure P-8), titled as Balkaran Singh Vs. Vishal Sharma, under Section 138 of Negotiable Instruments Act, 1881(for brevity, 'the Act') and consequent proceedings including the summoning order dated 01.08.2012(Annexure P-9).

The brief facts first. A complaint under the Act was filed by the respondent as cheque bearing No. 058672 dated 20.06.2012 for

Rs.95 lacs was dishonoured. The payment was stopped by the drawer. A legal notice dated 13.07.2012 (Annexure P-6) was issued by the respondent through his counsel calling upon the petitioner to make the payment of cheque amount within a period of 15 days. The petitioner sent a reply to the legal notice on 17.07.2012. The complaint was filed on 20.07.2012. A civil suit was also stated to have been filed against the petitioner.

The complaint is sought to be quashed on the ground that prior to taking cognizance no procedure as contemplated under Section 202 Cr.P.C. was adopted and that the summoning order was passed by the Court which had no jurisdiction.

In the short reply filed on behalf of the respondent, it was submitted that the complaint was filed in accordance with the provisions of the Act and the Court below has rightly summoned the petitioner after considering the preliminary evidence produced on record.

The issue regarding the procedure under Section 202 Cr.P.C. or regarding the jurisdiction was not pressed. Even otherwise it is settled that procedure under Section 202 Cr.P.C. is not required under the Negotiable Instruments Act. The counsel had limited his prayer to the maintainability of the complaint and counsel had referred to a decision of Hon'ble Apex Court rendered by Three Judge in **Yogendra Pratap Singh Vs. Savitri Pandey & Anr., Criminal Appeal No. 605 of 2012, decided on 19.09.2014** and had

raised a legal objection that the complaint was filed before the expiry of statutory period of 15 days and was therefore premature and was not maintainable.

I have heard the learned counsel for the parties and have gone through the paper-book carefully.

The cheque was issued on 20.06.2012 and was presented to the banker on 02.07.2012. It was dishonoured on 05.07.2012 as payment was stopped by the account-holder. A legal notice was sent on 13.07.2012 by the respondent through his counsel asking the petitioner to pay the amount within a period of 15 days from the receipt of notice. The complaint (Annexure P-8) was filed on 20.07.2012 without waiting for the expiry of stipulated period of 15 days.

Different High Courts had different views regarding the maintainability of the complaints filed before the expiry of statutory period of 15 days. Some Courts were of the view that if the complaint was filed prematurely, its maturity could be awaited or it could be returned to the complainant for filing it later while some High Courts were of the view that the complaints which were filed before the expiry of 15 days period were not maintainable.

To overcome the conflict, the matter was referred to the Three Judges Bench posing the following two questions:-

- (i) *Can cognizance of an offence punishable under Section 138 of the Negotiable Instruments Act 1881 be taken on the basis of a complaint filed*

before the expiry of the period of 15 days stipulated in the notice required to be served upon the drawer of the cheque in terms of Section 138(c) of the Act aforementioned? and

(ii) If answer to question No.1 is in the negative, can the complainant be permitted to present the complaint again notwithstanding the fact that the period of one month stipulated under Section 142 (b) for the filing of such a complaint has expired?

The Bench considered various decisions on the issue. It overruled its own decision in case of Narsingh Das Tapadia (2000) 7 SCC 183 and concluded as under:-

“37. A complaint filed before expiry of 15 days from the date on which notice has been served on drawer/accused cannot be said to disclose the cause of action in terms of Clause (c) of the proviso to Section 138 and upon such complaint which does not disclose the cause of action the Court is not competent to take cognizance. A conjoint reading of Section 138, which defines as to when and under what circumstances an offence can be said to have been committed, with Section 142(b) of the NI Act, that reiterates the position of the point of time when the cause of action has arisen, leaves no manner of doubt that no offence can be said to have been committed unless and until the period of 15 days, as prescribed Under Clause (c) of the proviso to Section 138, has, in fact, elapsed. Therefore, a Court is barred in law from taking cognizance of such complaint. It is not open to the

Court to take cognizance of such a complaint merely because on the date of consideration or taking cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer/accused has elapsed. We have no doubt that all the five essential features of Section 138 of the NI Act, as noted in the judgment of this Court in Kusum Ingots and Alloys Ltd. v. Pennar Peterson Securities Ltd. and Ors. etc. and which we have approved, must be satisfied for a complaint to be filed Under Section 138. If the period prescribed in Clause (c) of the proviso to Section 138 has not expired, there is no commission of an offence nor accrual of cause of action for filing of complaint Under Section 138 of the NI Act.

38. We, therefore, do not approve the view taken by this Court in Narsingh Das Tapadia v. Goverdhan Das Partani and Anr. and so also the judgments of various High Courts following Narsingh Das Tapadia that if the complaint Under Section 138 is filed before expiry of 15 days from the date on which notice has been served on the drawer/accused the same is premature and if on the date of taking cognizance a period of 15 days from the date of service of notice on the drawer/accused has expired, such complaint was legally maintainable and, hence, the same is overruled.

39. Rather, the view taken by this Court in Sarav Investment and Financial Consultancy wherein this

Court held that service of notice in terms of Section 138 proviso (b) of the NI Act was a part of the cause of action for lodging the complaint and communication to the accused about the fact of dishonouring of the cheque and calling upon to pay the amount within 15 days was imperative in character, commends itself to us. As noticed by us earlier, no complaint can be maintained against the drawer of the cheque before the expiry of 15 days from the date of receipt of notice because the drawer/accused cannot be said to have committed any offence until then. We approve the decision of this Court in Sarav Investment and Financial Consultancy and also the judgments of the High Courts which have taken the view following this judgment that the complaint Under Section 138 of the NI Act filed before the expiry of 15 days of service of notice could not be treated as a complaint in the eye of law and criminal proceedings initiated on such complaint are liable to be quashed.

40. Our answer to question (i) is, therefore, in the negative.”

Thus, it was ruled that a complaint under 138 of the Act filed before the expiry of 15 days of service of notice could not be treated as a complaint in the eyes of law and criminal proceedings initiated on such complaint were liable to be quashed.

Coming to the second question as to the fate of the

complaints which were filed prematurely and where the period of one month stipulated under Section 142(b) of the Act for filing such complaint had expired, the Bench observed as follows:-

“42. Section 142 of the NI Act prescribes the mode and so also the time within which a complaint for an offence Under Section 138 of the NI Act can be filed. A complaint made Under Section 138 by the payee or the holder in due course of the cheque has to be in writing and needs to be made within one month from the date on which the cause of action has arisen Under Clause (c) of the proviso to Section 138. The period of one month Under Section 142(b) begins from the date on which the cause of action has arisen Under Clause (c) of the proviso to Section 138. However, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within the prescribed period of one month, a complaint may be taken by the Court after the prescribed period. Now, since our answer to question (i) is in the negative, we observe that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to Clause (b) of Section 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to question (i). As we have already held that a complaint filed before the expiry of 15 days from the date of receipt

of notice issued Under Clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed Under Section 142 (b), his recourse is to seek the benefit of the proviso, satisfying the Court of sufficient cause. Question (ii) is answered accordingly.”

In view of the above, it is held that the complaint (Annexure P-8) was premature and not maintainable. The petition is allowed and impugned complaint and subsequent proceedings taken therein are quashed. The complainant-respondent may file fresh complaint within one month from today in the Court of competent jurisdiction raising the grievance in relation to the said cheque referred to in the impugned complaint. The delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the Act, as held in Yogendra Pratap Singh's case (supra). The petitioner can also seek return of his original documents which prayer shall be dealt with in accordance with law by the Court concerned expeditiously to enable him (complainant) to file a fresh complaint.

Copy of the order be sent to the Court concerned.

25.08.2015

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**(ANITA CHAUDHRY)
JUDGE**

