

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

**Crl. Misc. No. M-26344 of 2014
Date of decision : 10.09.2015**

Ramesh Bansal Ispat Udyog Pvt. Ltd. & Ors.

..... Petitioners

versus

M/s Madhav Alloys Pvt. Ltd.

... 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. Swaran Tiwana, Advocate
for the petitioner.

Mr. Rakesh Chopra, Advocate
for the respondent.

ANITA CHAUDHRY, J. (ORAL)

The petitioners are facing prosecution in a complaint filed by the respondent under Section 138 of Negotiable Instruments Act, 1881 (for brevity, 'the Act'). They are seeking quashing of the complaint and consequent proceedings including the summoning order dated 02.06.2014 (Annexure P-2).

The brief facts first. A complaint under the Act was filed by the respondent against petitioner No.1-firm and petitioners No.2 and 3 being Directors on the allegations that MS Billets were supplied by

the firm of the respondent and in order to discharge outstanding liability, petitioners No.2 and 3 issued a cheque bearing No. 759448 dated 07.04.2014 for Rs.19,55,650/- drawn at Punjab and Sind Bank, Amloh Road, Mandi Gobindgarh. The respondent presented the cheque twice with its banker i.e. State Bank of India, Mandi Gobindgarh, but was dishonoured vide memos dated 07.04.2014 and 10.04.2014 and for the third time it was presented at Sirhind Branch of State Bank of India. This time also the cheque was dishonoured vide memo dated 22.04.2014. A legal notice dated 08.05.2014 was issued by the respondent calling upon the petitioners to make payment of within 15 days. No payment was made, leading to the filing of the complaint under the Act on 02.06.2014.

Preliminary evidence was led and on the basis thereof, petitioners were summoned vide order dated 02.06.2014.

The petitioners are stated to have appeared before the Court; enlarged on bail; notice of accusation is stated to have been served upon them. An application for conducting cross-examination of the complainant is stated to have been filed by them.

The complaint is sought to be quashed primarily on the ground of jurisdiction and also that it was a security cheque and there was no legally enforceable liability and the dispute was civil in nature.

In the reply filed on behalf of the respondent, it was submitted that the petitioner had concealed the fact of their filing an application for dismissal of complaint for want of jurisdiction on the

ground that the Courts at Amloh had jurisdiction to try the complaint and Judicial Magistrate, Fatehgarh Sahib had made a reference to the Chief Judicial Magistrate, Fatehgarh Sahib, who had declined the reference relying upon Dashrath Rup Singh Rathod's case and returned the complaint to the Judicial Magistrate, Fatehgarh Sahib for further trial. It was further averred that the plea of jurisdiction of the petitioners is misconceived as they submitted themselves to the jurisdiction of trial Court at Fatehgarh Sahib by filing an application for permission to cross-examine the complainant, thereby crossing the stage of Section 145(2) of the Act. Pleas was taken that the other grounds raised were disputed questions of fact which cannot be gone into in a petition under Section 482 Cr.P.C.

Learned counsel for the petitioner had submitted that the cheque was issued, presented and dishonoured two times at Amloh and third time at Sirhind, therefore, the Court at Amloh had jurisdiction to try the matter.

Much stress has been laid by learned counsel for the petitioner on the fact that the cheque had bounced for the first time on 07.04.2014, but the notice demanding the amount was sent on 08.05.2014 after lapse of statutory period of 30 days and the cause of action accrued to him on 07.04.2014 and no fresh cause of action arises to the complainant by subsequent presentation. According to learned counsel, the complainant can present the cheque number of times during its validity, but the prosecution can be launched only for

the first dishonour of the cheque, therefore, the complaint was not within limitation and not maintainable. Reliance has been placed on the cases of **Kamlesh Kumar Vs. State of Bihar & Anr. 2014(2) SCC 424, Sadanandan Bhadran Vs. Madhavan Sunil Kumar 1998 (4) RCR(Crl.) 90** and of this Court in **Vijay Kumar Chopra Vs. M/s Sham Lal Dev Raj 2002(4) RCR(Crl.) 241.**

Learned counsel for the respondent has urged that the complaint was filed within limitation and was maintainable in view of **MSR Leathers Vs. S. Palaniappan & Anr. 2012(4) Recent Apex Judgments 608** and the Court at Fatehgarh Sahib had jurisdiction to try the complaint.

I have heard learned counsel for the parties and have perused the paper-book.

The factual aspect of issuance of cheque and dishonour thereof is not in dispute. After the summoning order, the petitioners have appeared and had been served with notice of accusation. An application under Section 145(2) of the Act was filed by them for conducting cross-examination on the complainant. In other words, trial against the petitioners had begun and they have accepted the jurisdiction of Court at Fatehgarh Sahib. The reference made by the trial Court was declined by CJM, Fatehgarh Sahib vide order dated 22.09.2014 and trial Court at Fatehgarh Sahib had been directed to proceed with the trial. Once the trial has begun and after promulgation of Negotiable Instruments (Amendment) Ordinance,

2015, the issue regarding jurisdiction does not survive.

Undisputedly, cheque was dishonoured on three occasions i.e. on 07.4.2014, 10.04.2014 and 22.04.2014. It is well settled that a holder of the cheque can present it number of times within the period of its validity. The question is when the limitation starts. In the case of *Sadanandan Bhadran (supra)*, it was held that while a second or successive presentation of the cheque is legally permissible so long as such presentation is within the period of six months or the validity of the cheque which is earlier, the second or subsequent dishonour of the cheque would not entitle the holder/ payee to issue a statutory notice to the drawer nor would it entitle him to institute legal proceedings against the drawer in the event he fails to arrange the payment. It was further held that the failure of the drawer/ payee to file a complaint within one month resulted in forfeiture of the complainant's right to prosecute the drawer/ payee which forfeiture cannot be circumvented by him by presenting the cheque afresh and inviting a dishonour to be followed by a fresh notice and a delayed complaint on the basis thereof.

Similar view was reiterated in *Vijay Kumar Chopra's case (supra)* and this Court held that prosecution can be launched on the basis of cause of action accrued on first dishonour of the cheque.

The proposition laid down in *Sadanandan Bhadran's case (supra)* was overruled by the Hon'ble Apex Court in the case of *MSR Leathers(supra)* and it was held as follows:-

20. The expression 'cause of action' appearing in Section 142(b) of the Act cannot therefore be understood to be limited to any given requirement out of the three requirements that are mandatory for launching a prosecution on the basis of a dishonoured cheque. Having said that, every time a cheque is presented in the manner and within the time stipulated under the proviso to Section 138 followed by a notice within the meaning of clause (b) of proviso to Section 138 and the drawer fails to make the payment of the amount within the stipulated period of fifteen days after the date of receipt of such notice, a cause of action accrues to the holder of the cheque to institute proceedings for prosecution of the drawer.

“21. There is, in our view, nothing either in Section 138 or Section 142 to curtail the said right of the payee, leave alone a forfeiture of the said right for no better reason than the failure of the holder of the cheque to institute prosecution against the drawer when the cause of action to do so had first arisen. Simply because the prosecution for an offence under Section 138 must on the language of Section 142 be instituted within one month from the date of the failure of the drawer to make the payment does not in our view militate against the accrual of multiple causes of action to the holder of the cheque upon failure of the drawer to make the payment of the cheque amount. In the absence of any juristic principle on which such failure to prosecute on the basis of the first default in payment should result in forfeiture, we find it difficult to hold that the payee would lose his right to institute such proceedings on a subsequent default that satisfies all the three requirements of Section 138.

22. That brings us to the question whether an offence punishable under Section 138 can be committed only

once as held by this Court in Sadanandan Bhadran's case (supra). The holder of a cheque as seen earlier can present it before a bank any number of times within the period of six months or during the period of its validity, whichever is earlier. This right of the holder to present the cheque for encashment carries with it a corresponding obligation on the part of the drawer to ensure that the cheque drawn by him is honoured by the bank who stands in the capacity of an agent of the drawer vis-à-vis the holder of the cheque. If the holder of the cheque has a right, as indeed is in the unanimous opinion expressed in the decisions on the subject, there is no reason why the corresponding obligation of the drawer should also not continue every time the cheque is presented for encashment if it satisfies the requirements stipulated in that clause (a) to the proviso to Section 138. There is nothing in that proviso to even remotely suggest that clause (a) would have no application to a cheque presented for the second time if the same has already been dishonoured once. Indeed if the legislative intent was to restrict prosecution only to cases arising out of the first dishonour of a cheque nothing prevented it from stipulating so in clause (a) itself. In the absence of any such provision a dishonour whether based on a second or any successive presentation of a cheque for encashment would be a dishonour within the meaning of Section 138 and clause (a) to proviso thereof. We have, therefore, no manner of doubt that so long as the cheque remains unpaid it is the continuing obligation of the drawer to make good the same by either arranging the funds in the account on which the cheque is drawn or liquidating the liability otherwise. It is true that a dishonour of the cheque can be made a basis for prosecution of the offender but once, but that is far from saying that the holder of the

cheque does not have the discretion to choose out of several such defaults, one default, on which to launch such a prosecution. The omission or the failure of the holder to institute prosecution does not, therefore, give any immunity to the drawer so long as the cheque is dishonoured within its validity period and the conditions precedent for prosecution in terms of the proviso to Section 138 are satisfied.

23. Coming then to the question whether there is anything in Section 142(b) to suggest that prosecution based on subsequent or successive dishonour is impermissible, we need only mention that the limitation which Sadanandan Bhadran's case (*supra*) reads into that provision does not appear to us to arise. We say so because while a complaint based on a default and notice to pay must be filed within a period of one month from the date the cause of action accrues, which implies the date on which the period of 15 days granted to the drawer to arrange the payment expires, there is nothing in Section 142 to suggest that expiry of any such limitation would absolve him of his criminal liability should the cheque continue to get dishonoured by the bank on subsequent presentations. So long as the cheque is valid and so long as it is dishonoured upon presentation to the bank, the holder's right to prosecute the drawer for the default committed by him remains valid and exercisable. The argument that the holder takes advantage by not filing a prosecution against the drawer has not impressed us. By reason of a fresh presentation of a cheque followed by a fresh notice in terms of Section 138, proviso (b), the drawer gets an extended period to make the payment and thereby benefits in terms of further opportunity to pay to avoid prosecution. Such fresh opportunity cannot help the defaulter on any juristic principle, to get a complete

absolution from prosecution.”

While over-ruling the view taken in Sadanandan Bhadran's case, the Hon'ble Apex Court further observed as follows:-

32. The controversy, in our opinion, can be seen from another angle also. If the decision in Sadanandan Bhadran's case (supra) is correct, there is no option for the holder to defer institution of judicial proceedings even when he may like to do so for so simple and innocuous a reason as to extend certain accommodation to the drawer to arrange the payment of the amount. Apart from the fact that an interpretation which curtails the right of the parties to negotiate a possible settlement without prejudice to the right of holder to institute proceedings within the outer period of limitation stipulated by law should be avoided we see no reason why parties should, by a process of interpretation, be forced to launch complaints where they can or may like to defer such action for good and valid reasons. After all, neither the courts nor the parties stand to gain by institution of proceedings which may become unnecessary if cheque amount is paid by the drawer. The magistracy in this country is over-burdened by an avalanche of cases under Section 138 of Negotiable Instruments Act. If the first default itself must in terms of the decision in Sadanandan Bhadran's case (supra) result in filing of prosecution, avoidable litigation would become an inevitable bane of the

legislation that was intended only to bring solemnity to cheques without forcing parties to resort to proceedings in the courts of law. While there is no empirical data to suggest that the problems of overburdened magistracy and judicial system at the district level is entirely because of the compulsions arising out of the decisions in Sadanandan Bhadran's case (supra), it is difficult to say that the law declared in that decision has not added to court congestion.

33. In the result, we overrule the decision in Sadanandan Bhadran's case (supra) and hold that prosecution based upon second or successive dishonour of the cheque is also permissible so long as the same satisfies the requirements stipulated in the proviso to Section 138 of the Negotiable Instruments Act. The reference is answered accordingly. The appeals shall now be listed before the regular Bench for hearing and disposal in light of the observations made above.”

In the instant case, as noticed above, cheque was dishonoured lastly on 22.04.2014; legal notice was served on 08.05.2014 and complaint was filed on 02.06.2014. In no way, it can be said that either the legal notice was not within limitation or that the complaint was time barred.

In Kamlesh Kumar's case (supra), cheque was dishonoured on 25.10.2008, the legal notice was served on 27.10.2008, but no complaint was filed. The cheque was again

presented on 10.11.2008, but the legal notice was served after the stipulated period of one month, on 17.12.2008. The complaint was filed on 07.01.2009. It was held that the complaint was not maintainable as the legal notice was served after the expiry of statutory period of 30 days, which, as noticed above, is not the case here.

Regarding the other grounds raised by the petitioners, those questions are to be considered after evidence is led.

No ground exists for quashing the complaint.
Dismissed.

The parties would now appear before the trial Court on 21.09.2015.

10.09.2015

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**(ANITA CHAUDHRY)
JUDGE**