

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

**Crl. Misc. No. M-37264 of 2014
Date of Decision: 11.9.2015.**

Som Nath

.....Petitioner

Vs.

Mukesh Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Harish Sharma, Advocate
for the petitioner.

None for the respondent.

.....

SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of criminal complaint No. COMA/5003 dated 24.7.2014 titled "Mukesh Kumar versus Som Nath" under Section 138 of the Negotiable Instruments Act, 1881 ('Act' for short) and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioner has submitted that a perusal of the complaint itself reveals that the cheque in question had been issued qua a time barred debt. Therefore, the complaint in question was liable to be quashed. In support of his arguments, learned counsel has placed reliance on '**Manjit Kaur versus Vanita 2010(3) R.C.R. (Criminal) 574**', wherein it was held as under:-

"Adverting to the facts of the instant case, the cheque

was issued on 28.6.2003. On reckoning, it works out that the loan was advanced somewhere in June, 1999. A meticulous perusal of the evidence on record would reveal that the appellant has not produced any document or other evidence revealing that the accused-respondent had acknowledged the debt within three years from the date of loan. Thus, by the time, the cheque was issued, the debt became barred by limitation because no acknowledgment was obtained before the expiry of three years from the date of loan. Section 18 of the Limitation Act, 1963 deals with the theory underlying the doctrine of acknowledgment. The true principle underlying an acknowledgment is that it merely renews the liability and gives the creditor or claimant a fresh period of limitation according to the nature of the liability which exists at the date of the acknowledgment. An acknowledgment cannot be regarded as evidentiary of the debt but an acknowledgment that a person owes money to another, a specified person is good evidence of his owing money to another. The dishonoured cheque Ex. P1 cannot be treated as acknowledgment under Section 18 of the Limitation Act, since the acknowledgment should be before the period of limitation is over and that it should be in writing. Thus, it cannot be said that the appellant has been able to prove that Ex. P1 was in relation to a legally enforceable debt or liability in law as the same was admittedly issued after more than three years of

the advancement of the alleged amount as loan. So, if the matter is viewed in the background of the observations rendered in re: Ashwini Satish Bhat (Mrs.) (supra), it turns out that the accused- respondent had issued the cheque in 2003 when the debt had already become time barred. The acknowledgment of the alleged amount in 2003 was not valid acknowledgment under Section 18 of the Limitation Act and consequently it was not a legally enforceable debt.”

Learned counsel for the petitioner has further placed reliance on '**M/s Vijay Polymers Pvt. Ltd. and another versus M/s Vinnay Aggarwal 2010(5) R.C.R. (Criminal) 728**' wherein it was held as under:-

“6. A perusal of the complaint and other documents as referred to above goes to show that the complainant had paid a sum of Rs. 6 lakhs by way of cheque to petitioner No.1 at the asking of petitioner No.2 somewhere in January, 2002 and the said cheque was credited in the account of petitioner No.1 on 1.2.2002 and was payable after six months and was not paid within three years from 31.8.2002 that is the period within which it was under limitation and as such the loan became time barred as on 31.8.2002. A perusal of the complaint also clarified that first two cheques which stated to have been paid to the complainant by the petitioners were paid on 27.4.2006 and 31.5.2006. Thus those cheques were paid after three years of the friendly loan having become time barred. Similarly, the

cheques issued in lieu of the original cheque i.e. a cheque of Rs. 50,000/- bearing No. 817773 dated 30-08-2006 and another cheque bearing No. 350562 dated 05-05- 2007.

7. It is submitted on behalf of learned counsel for the petitioners that in view of provisions of [Section 138](#) of the N.I. Act and if the same read along with explanation, it is apparent that the offence under [Section 138](#) of the N.I. Act as per the scheme of the Act can be fastened on an accused only if he commits a default in repayment of the dishonoured cheque which was issued in discharge of a legally recoverable debt.

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12. A perusal of the aforesaid provision clearly goes to show that for analyzing the limitation of a civil liability beyond a period of three years, the acknowledgement, if any, must be there before period of limitation is over, which is not the case.”

None has appeared on behalf of the respondent despite service.

Annexure P-1 is the copy of the complaint in question. A perusal of the same reveals that the petitioner was on friendly terms with the complainant. Petitioner had agreed to sell his property to Sunil Kumar and complainant had attested the said agreement to sell dated 20.10.2010. In December 2010, petitioner again approached the complainant on the pretext that he wanted to purchase some property and required ₹ 4,00,000/-.

On 21.1.2011, complainant advanced loan to the petitioner to the tune of ₹ 4,00,000/-. In May 2014, complainant requested the petitioner to repay the loan as he was in urgent need of money. Consequently, petitioner issued a cheque in the sum of ₹ 4,00,000/- on 4.6.2014 in favour of the complainant. When the cheque in question was presented for encashment, the same was dishonoured with the remarks "insufficient funds". Despite issuance of notice, petitioner had failed to pay the cheque amount in question. Hence, the complaint in question was filed.

Complainant in support of his case, led his preliminary evidence and the petitioner has been summoned to face the trial by the Trial court. It is not the case of the petitioner that the cheque in question was not signed/issued by him. The fact that the cheque in question was issued by the petitioner leads to a presumption that there exists a legally enforceable debt or liability. However, the said presumption is rebuttable and the same can be rebutted by the petitioner by leading evidence. At this stage, without there being any evidence on record, it cannot be held that the cheque drawn by the petitioner was in respect of a debt or liability which was not legally enforceable. The plea raised by the petitioner that the cheque in question was issued on account of a time barred debt can be gone into by the Trial Court after the parties lead their evidence with regard to their respective pleas. However, at this stage, it would not be just and expedient to quash the criminal proceedings at the very threshold by presuming that the cheque in question had been issued qua a time barred debt. Complainant is yet to lead his evidence in support of his case. In

case the complainant fails to establish his case, petitioner will be acquitted by the Trial Court but it would not be in the interest of justice to scuttle the criminal proceedings at the very threshold.

Hon'ble Apex Court in '**S. Natarajan versus Sama Dharman 2015(2) R.C.R. (Criminal) 854**', has held as under:-

7. In our opinion, the High Court erred in quashing the complaint on the ground that the debt or liability was barred by limitation and, therefore, there was no legally enforceable debt or liability against the accused. The case before the High Court was not of such a nature which could have persuaded the High Court to draw such a definite conclusion at this stage. Whether the debt was time barred or not can be decided only after the evidence is adduced, it being a mixed question of law and fact.

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10. In our opinion, therefore, the High Court could not have quashed the proceedings on the ground that at the time of issuance of cheque, the debt had become time barred and therefore, the complaint was not maintainable. The High Court, therefore, fell into a grave error in quashing the proceedings.

11. In the result, the impugned order dated 25/7/2012 is set aside. The trial court shall proceed with the case."

In view of the decision of the Apex Court in *S.Natarajan's* case (supra), the judgments relied upon by the learned counsel for the petitioner fail to advance the case of the petitioner.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

September 11, 2015
Gurpreet