

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

CRM-A-1021-MA-2015.

Decided on:-27.09.2016.

M/s International Panaacea Limited.

.....Applicant-Appellant.

Versus

Man Singh.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Jainainder Saini, Advocate
for the applicant-appellant.

None for the respondent.

HARI PAL VERMA, J. (ORAL)

This application has been moved under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against the order dated 2.5.2015 passed by the Court of learned Judicial Magistrate 1st Class, Hisar.

No one is present on behalf of the respondent despite service.

I have heard learned counsel for the applicant-appellant, besides perusing the record with due care and circumspection.

Leave granted.

The appellant has impugned the order dated 2.5.2015 passed by learned Judicial Magistrate 1st Class, Hisar whereby the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881 (for shot, the Act) was dismissed on the ground that the same has not been filed

within 30 days from the date of order dated 22.11.2014 passed by learned Chief Metropolitan Magistrate, Patiala House Court, New Delhi.

Learned counsel for the appellant-complainant states that initially, the complainant had filed the complaint titled as ***M/s International Panaacea Limited Versus Man Singh*** under Section 138 of the Act in the Court of Chief Metropolitan Magistrate, Patiala House Court, New Delhi. However, in view of the law laid down by Hon'ble Supreme Court in ***Dashrath Rupsingh Rathod Versus State of Maharashtra and another 2014(3) RCR (Criminal) 904***, the complaint was ordered to be returned to the complainant for want of jurisdiction to entertain the complaint. Accordingly, the complainant was required to prefer the complaint before the Court of competent jurisdiction i.e. the Court of Judicial Magistrate at Hisar.

Learned counsel for the appellant further states that pursuant to order dated 22.11.2014 passed by the Chief Metropolitan Magistrate, Patiala House Court, New Delhi, the complainant had applied for the certified copy of the file on 20.12.2014. Accordingly, the original file which was filed before the Court in New Delhi was returned to the appellant-complainant on 20.4.2015. Resultantly, the complainant presented the complaint before learned Magistrate at Hisar on 2.5.2015.

Learned counsel for the appellant further contends that the period of 30 days was required to be reckoned from the date when the file was returned to the appellant i.e. on 20.4.2015, but the complaint was dismissed by learned Magistrate at Hisar on 2.5.2015 on the ground that the period of 30

days is required to be reckoned from the date when order dated 22.11.2014 was passed by the Court in New Delhi.

I have heard learned counsel for the appellant.

Since no one has come present on behalf of the respondent-accused, adverse inference is bound to be drawn against him as if he has no strong opposition to the contention raised by learned counsel for the appellant. Accordingly, when the contention raised by learned counsel for the appellant has not been rebutted and having perused the paper book, this Court comes to the conclusion that the appellant-complainant had presented the complaint well within the period of limitation. Therefore, the impugned order dated 2.5.2015 passed by the Judicial Magistrate 1st Class, Hisar dismissing the complaint on the ground of limitation cannot sustain and is set aside.

In view of the above, the present appeal stands allowed and the trial Court is directed to proceed with the case in accordance with law.

September 27, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes / No

Whether Reportable: Yes / No