229 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 3070 of 2009
DECIDED ON: JULY 13, 2016

BALDEV LAL

.....PETITIONER

VERSUS

KARTAR SINGH AND ANR

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Jagdeep S. Virk, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana

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JASPAL SINGH, J

Challenge in this revision petition is to the judgment dated November 18, 2009 passed by learned Additional Sessions Judge, Kurukshetra in CRA No. 40 of 2009 whereby the judgment and quantum dated July 23, 2009 passed by learned JMIC, Kurukshetra has been upheld vide which petitioner has been convicted under Section 138 of Negotiable Instruments Act (for short "Act") and sentenced to undergo RI for a period of six months. He was also directed to pay compensation to the complainant to the tune of ₹50,000/- in terms of section 357(3) Cr.P.C.

The facts giving rise to the instant *lis* are that complainant filed a complaint under Section 138 and 142 of the Act against Baldev Lal wherein, he has unfolded that petitioner had borrowed the amount on the basis of Pronote and receipt from the complainant and in discharge of his legal liability for Rs.50,000/- drawn at Punjab National Bank was handed over to complainant. The said cheque was presented in the bank for encashment but the same was dishonored on the plea of 'account closed'. As per complainant, petitioner-accused had committed fraud and cheating upon him by issuing cheque intentionally and malafidely whereas account has already been closed on June 14, 2000.

Thereafter, complainant got issued legal notice within fifteen days of dishonour of cheque. Such notice was issued on May 04, 2001 and same was sent through registered post as well as UPC. Even then petitioner failed to make the payment and as such, complaint before the court.

Learned trial Magistrate, in order to summon the petitioner on the basis of preliminary evidence, notice of accusation was served upon the petitioner, prosecution evidence was recorded, petitioner was examined under Section 313 Cr.P.C. and three witnesses were examined in defence. Learned trial Magistrate after considering the prosecution version as well as defence version held the petitioner/accused guilty for commission of offence under Section 138 of the Act and convicted and sentenced him thereunder.

Being aggrieved of the passing of the said judgment of conviction dated July 23, 2009 and order of sentence dated July 24, 2009, petitioner filed the appeal which was upheld by lower Appellate Court.

Disheartened with the judgments passed by both the courts below, petitioner has approached this Court by way of instant revision petition.

While assailing the impugned judgment of conviction and order of sentence, it has been argued with vehemence by learned counsel for the petitioner that the same are absolutely against the evidence available on file as well as settled cannons of law. The Courts below have committed grave error of law in convicting and sentencing the petitioner in a complaint under Section 138 and 142 of the Act on the basis of most untrustworthy evidence. In fact, the complaint filed by the complainant is barred by limitation and the cognizance thereof, by learned trial Court is against the law, facts and evidence on record. The complaint was returned vide receipt Ex.P-2 of the Memo of Dishonour on May 02, 2001. The legal notice Ex.P3 was issued on May 04, 2001 to the petitioner and after the expiry of 15 days, the cause of action arose on May 19, 2001. Thus, the last date for filing the complaint was June 19, 2001 but in the instant case the complaint was presented on July 02, 2001 i.e. after the expiry of period of one month from the date of approval of cause of action. Thus, learned trial Court has no jurisdiction to entertain the complaint.

Learned counsel for the petitioner further contends that both the courts below have miserably failed to consider Section 5 of the Limitation Act as well as Section 473 of the Code of Criminal Procedure (for short 'Code'). The only procedure to be followed in cases under Section 138 and 142 of the Act is the one itself provided in the Act. The question as to the limitation of filing the complaint is provided in the Act itself, which is otherwise a complete package. The provisions of the Act are mandatory in their nature. The complete procedure for filing the complaint is envisaged by the above-referred provisions of the Act. The complaint can be filed only in accordance with the procedure prescribed in the said package. Thus, the provisions does not give any jurisdiction or power to the Court to condone the delay. Section 5 of the Limitation Act does not confer any power upon the court to condone delay in filing original proceedings, as the complaint is neither an appeal nor an application within the meaning of Section 5 of the Limitation Act.

While relying upon the judgement captioned as ***C. Kalegouda vs. S. Sadashivappa;*** ***(1998) Crl. L.J. 3539;*** it has been contended by learned counsel for the petitioner that in view of the mandatory provisions enshrined in the Act, there is no question of the court condoning the delay in filing the complaint under Section 142 of the Act. Both the courts below have not considered proposition of law observed in the case of ***Kunhimunhammed vs. khadeeja;*** ***19915(1) CCC 321 (Kerala);***in which it has been observed that the limitation can neither be extended under Section 473 of the Code, nor can the delay be condoned under Section 5 of the Limitation Act. A complaint filed beyond one month of the date on which the cause of action has arisen is barred and the Magistrate has no jurisdiction to take cognizance of the complaint.

Similarly, in the case of ***Pallavi Traders vs. Petro Lubes;*** ***1998(3) CCC 1995*** the Andhra Pradesh High Court has held that the delay in filing the complaint under the Act cannot be condoned under Section 5 of the Limitation Act. Magistrate has no jurisdiction to entertain the complaint filed beyond one month from the date of accrual of cause of action. In the instant case the complaint was filed on July 02, 2001 i.e. after the expiry of a period more than one month. Learned counsel for the petitioner further contended that respondent No.1/complainant has alleged in his complaint as well as in the legal notice that an amount of ₹50,000/- was taken from him by the petitioner against a duly executed pronote. Thus, it gives an inference that cheque in question was not issued as any legally enforceable debt, rather it was just a kind of guarantee. Thus, the provisions of the Act are not attracted. To buttress this contention petitioner has placed reliance upon the judgment rendered by Madras High Court in the case of ***Sri Murugan Financiers vs. P.V. Perumal;* 2005(1) CCC 696 (Madras);** in which it was held that at the time of advancement of loan promissory notes for various amounts were executed, thus, there was no reason to issue cheque at the same time. Rather, the cheque was issued only as a guarantee for the amount payable by the accused. When the cheque has been issued as a guarantee, its dishonourment by the Bank does not attract the penal provisions of the Act. Moreover, the alleged pronote has also been seen in the light of the day and in such a situation an inference can be drawn that the said loan has already been repaid by the son of the petitioner and nothing was due or recoverable from the petitioner.

While concluding his arguments, learned counsel for the petitioner has submitted that since it is fully proved on record that the complaint is barred by limitation and further that the cheque, if any, was issued by way of security or guarantee, the conviction and sentence imposed upon the petitioner deserves to be set aside by way of acceptance of instant petition.

On the other hand, learned counsel for respondent has supported the judgment of conviction and submitted that both the courts below have given concurrent findings after taking into consideration every aspect of the case. As far as limitation is concerned, the courts were closed on account of summer vacations from June 16, 2001 to June 31, 2001 and there was holiday, it being Sunday on July 01, 2001. The courts open after summer vacations on July 02, 2001. On the opening day the complaint was instituted. Thus, there is in fact, no delay in view of Section 4 of the Limitation Act. As far as the other point raised by the petitioner is concerned that the cheque was issued against the legally enforceable debt, there is presumption provided under the Act, which has been raised by both the courts below. Though there is no infirmity or illegality in the impugned judgments and the petitioner has rightly been convicted and sentenced and instant petition deserves to be dismissed.

After bestowing due consideration to the rival submissions made by learned counsel for the parties and scrutinizing the evidence as well as impugned judgments rendered by both the courts below, this Court does not find any legal or factual substance in the various submissions made by the petitioner. Rather, this Court is of the considered view that the judgment passed by learned Magistrate which has been upheld by learned trial Court are absolutely in consonance with the evidence available on file as well as settled proposition of law.

As far as the first limb of argument with regard to the limitation is concerned, no doubt the Act itself is a complete package, which not only prescribes the procedure but also the limitation.

Undisputably the courts remained closed from June 16, 2001 to June 30, 2001 on account of summer vacations and on July 01, 2001 there was a holiday, it being Sunday. Thus the complaint was filed immediately on the opening day i.e. July 02, 2001. As per Section 138(b) of the Act prior to the Amendment, notice was to be served within 15 days form the date of dishonourment of the cheque, which was given in time and after the expiry of 15 days. The complaint was to be filed within one month. In the case of ***Chandradasan vs. George;*** ***2004(1) CCC 291;*** it was observed that when an

Act prescribes a period for doing something in a court and the last day falls on a holiday, he is prevented from doing that for the reason that the last day happens to be a holiday. Then the general principle is that when a party prevented from doing an act for the reason that the court is not working on that day he is to be allowed to do that at the first subsequent opportunity.

Even, Section 4 of the Limitation Act provides that if the period for filing any suit, appeal or application expires on a day when the court is closed, such an application can be filed on the day when the court reopened.

Adverting to the facts of the case in hand though the cause of action had arisen on June 19, 2001. Since the courts were closed on account of summer vacations from June 16, 2001 to June 30, 2001 and there happens to be Sunday on July 01, 2001, complaint was filed on the opening day i.e. on July 02, 2001. Thus, taking the case from any of the angles, the complaint has rightly been held to be within limitation by the both the courts below. As regards the plea taken by the petitioner that the cheque was issued as a security or guarantee and as such the complaint is not maintainable under Section 138 of the Act. The issuance of cheque by the petitioner is not in dispute, as the petitioner has not denied his signatures on the cheque in question. But the petitioner could not prove by adducing cogent and convincing evidence that cheque was issued as a security or guarantee. Rather, it is appeared in the testimony of DW-2 that the accused had given no cheque to the finance company, as a security of loan. Otherwise, also petitioner has failed to rebut the presumption as envisaged under Section 139 of the Act. Moreover, there is no ground to disbelieve the evidence adduced by the complainant oral as well as documentary.

In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, the same is dismissed and the judgments passed by both the courts below are upheld.

JULY 13, 2016 **(JASPAL SINGH)**
sham **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*