

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

CRM-A-1322-MA-2014(O&M)

Date of decision:-11.12.2017

M/s Punjab Kashmir Finance Ltd.

...Applicant

Versus

Hasan Mohammad

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Rohit Sud, Advocate
for the applicant.

None for the respondent.

H.S. MADAAN, J.

CRM-25625-2014

Heard.

For the reasons mentioned in the application, the same stands allowed and delay of 35 days in filing of the application for grant of special leave to appeal is condoned.

CRM-A-1322-MA-2014

Applicant – M/s Punjab Kashmir Finance Ltd. through Nirmal Singh, Section Officer has filed this application under Section 378(4) Cr.P.C. seeking special leave to appeal.

Briefly stated, facts of the case are that complainant – M/s Punjab Kashmir Finance Ltd. through its Assistant Manager legal Mr.Ajit Singh had brought a criminal complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the Act)

against accused Hasan Mohammad on the allegations that accused having raised a loan of Rs.3,20,000/- from the complainant for purchase of a vehicle on execution of the relevant documents had issued a cheque No.978256 dated 21.4.2009 in the sum of R.2,50,311/-, however on presentation, the cheque was returned by banker of the accused with remarks "Funds Insufficient" on the memo dated 4.5.2009; that on coming to know about it, the complainant had served a legal notice dated 1.6.2009 calling upon the accused to make payment of cheque amount within 15 days of receipt of notice but to no effect, as such the complainant filed complaint in question against the accused in the Court of Sub Divisional Judicial Magistrate, Hathin.

After recording of preliminary evidence, accused was summoned. Notice of accusation under Section 138 of the Act was served upon him, to which, he pleaded not guilty and claimed trial.

During the course of evidence, complainant examined Ajit Singh, Assistant Manager as PW1 and after that closed the evidence.

Statement of accused was recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against him submitted that he was innocent and had been falsely involved in the case.

During his defence evidence, the accused examined himself as DW1, who tendered his affidavit Ex.DW1/A.

Accused further tendered in evidence documents Ex.D1 to Ex.D21.

Thereafter, the defence evidence of accused stood closed.

After hearing arguments, the learned trial Magistrate

dismissed the complaint under Section 138 of the Act giving the following reasons:

A complaint petition in view of clause (b) of Section 142 of the Act was required to be filed within one month from the date on which the cause of action in terms of Clause (c) of the proviso to Section 138 of the Act which stipulates that “the drawer if such cheque failed to make the payment of the said amount of money to the payee within fifteen days of the receipt of the said notice.”

The complaint petition admittedly was filed on 15.10.2009. The notice having been sent on 1.6.2009, if the presumption of service of notice within a reasonable time is raised, it should be deemed to have been served at best within a period of thirty days from the date of issuance therefore, i.e. 1.7.2009. The accused was required to make payment in terms of the said notice within fifteen days thereafter, i.e. or about 16.7.2009.

The complainant felt aggrieved and he had knocked at the door of this Court by moving an application under Section 378 (4) Cr.P.C. for grant of special leave to appeal against the judgment of acquittal, notice of which has been issued to the respondent, who had earlier put in appearance through counsel but today there is no representation on behalf of respondent.

I have heard learned counsel for the applicant besides going through the record.

It is apparent from the record that the trial Magistrate clearly fell in error in coming to the conclusion that claim was time barred. Originally the complaint had been filed on 15.10.2009, then as per dated 18.9.2009 recorded by M.M.: Delhi, the complaint was returned to the complainant with liberty to file before the competent Court having territorial jurisdiction subject to law of land and one month time was given to the complainant for seeking the return of the complaint, which means the complaint could have been filed up to 18.10.2009. The complaint in question had been filed on 15.10.2009 i.e. within a period of limitation. The trial Magistrate without taking into consideration these orders took the date of original filing of the complaint as 15.10.2009 and then observing that notice had been sent on 1.6.2009, therefore is barred by limitation. Then the facts which escaped his attention were that notice having been sent on 1.6.2009, the original complaint had been filed on 29.6.2009, without considering the fact that accused was living outside Delhi in the light of the judgment passed by Delhi High Court in Criminal Revision No.202/09 titled as “M/s ICICI Bank Limited Versus Subhash Chand Bansal”, the complaint had been withdrawn seeking liberty to file the same before the competent Court having territorial jurisdiction and as such request by Ajit Singh, an authorized representative was accepted by the Court granting time of one month starting from 18.9.2009 up to 18.10.2009. The complaint having been filed on 15.9.2009 is well within limitation and trial Court fell in error in dismissing the complaint being time barred.

Therefore, the application is allowed and the order dated 5.5.2014 dismissing the complaint is set aside. The complaint is ordered

to be restored to its original number. The parties through counsel are directed to appear before the trial Court on 9.1.2018 and the trial Court is directed to decide the complaint on merit.

Copy of this order be sent to the trial Court for compliance.

11.12.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No