

CRM-M-26630 of 2017

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

CRM-M-26630 of 2017
Date of Decision: 25.07.2017

M/s Jindal Paint & Hardware and another

....Petitioners

Versus

Abhishek Sharma

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Ashish Gupta, Advocate, for the petitioners.

RAMENDRA JAIN, J. (ORAL)

Prayer in the instant petition under Section 482 Cr.P.C. has been made for quashing/modification of order dated 08.03.2017 (Annexure P-8) passed by the Revisional Court, granting liberty to the respondent-complainant to file fresh complaint under section 138 of the Negotiable Instruments Act (for short 'the Act').

Briefly stated, a complaint under Section 138 of the Act was filed by respondent – Abhishek Sharma against the petitioners on 14.10.2014. On finding *prima facie* case, petitioners were summoned to face trial under Section 138 of the Act by learned Magistrate vide order dated 07.01.2015. Being aggrieved, petitioners preferred revision petition before the Revisional Court at Bathinda, challenging the aforesaid summoning order on the ground that since the statutory period of filing the complaint under

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Section 138 of the Act after issuance of legal notice had not elapsed, therefore, the complaint of the respondent was not maintainable being filed pre-maturely and, thus, the summoning of the petitioners was bad in law.

The Revisional Court, after hearing both the sides, while allowing the revision petition, set aside the summoning order of the petitioner vide order dated 08.03.2017 with a direction to the complainant-respondent to file a fresh complaint within one month from the date of impugned order dated 08.03.2017.

Learned counsel for the petitioners contends that the respondent did constant manipulations in the dates of filing the complaint and thereafter as well to maintain the maintainability of his complaint. The complaint, in fact, was filed on 14.10.2014, but the respondent pleaded that the same was filed by him on 04.11.2014. Since the complaint filed by the respondent was not legally maintainable being filed pre-maturely, therefore, the Revisional Court was not empowered to direct the respondent to file a fresh complaint.

After giving my thoughtful consideration to the submissions made by learned counsel for the petitioners, I find that the instant petition is completely devoid of any merit for the simple reason that a legal infirmity can be cured at any stage. No one can be non-suited on technical grounds. In the instant case, the mistake committed by the respondent in filing the complaint pre-maturely is not so serious that he cannot be permitted to cure the same. By raising technical plea, petitioners want to wriggle out from their legal liability, if any, against issuance of cheque in dispute by them on the basis of which respondent had filed complaint under Section 138 of the

Act, for which they cannot be permitted.

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I have gone through the impugned order and find no illegality or perversity in the same.

Hence, the petition is dismissed.

July 25, 2017
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No