

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

CRR No.3234 of 2011 (O&M)
Date of Decision: November 17, 2017

Rupinder Singh

...Petitioner

VERSUS

Rachhpal Singh another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.S.Salar, Advocate
for the petitioner.

Mr.G.N.Malik, Advocate
for respondent No1.

Mr.Ayush Sarna, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Rupinder Singh against respondents Rachhpal Singh and State of Punjab, challenging the impugned judgment of conviction and order of sentence dated 30.03.2009 passed by learned Sub Divisional Judicial Magistrate, Malerkotla, vide which the petitioner was convicted and sentenced to undergo imprisonment for a period of one year and to pay fine of ₹1000/- and in default of payment of fine, to undergo imprisonment for a period of one month under Section 138 of the Negotiable Instruments Act (for brevity 'NI Act') and also challenging the judgment dated 23.09.2011 passed by learned Addl. Sessions Judge, Sangrur, vide which appeal filed by petitioner

was allowed and judgment of conviction and order of sentence dated

30.03.2009 were set aside and the case was remanded back to learned trial Court.

Notice of motion was issued. Learned counsel for respondent No.1 as well as learned State counsel appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that complainant Rachhpal Singh filed a complaint against Rupinder Singh under Section 138 of NI Act. It is mainly stated in the complaint that accused Rupinder Singh borrowed a sum of ₹4 lakhs from the complainant and in discharge of the said liability, the accused issued cheque No.0132453 dated 03.06.2006 for a sum of ₹4 lakhs in favour of the complainant, which on presentation for encashment, was returned back with the remarks 'Insufficient Funds'. Legal notice was served. When the payment was not made, then the complaint was filed within time.

After the closure of complainant's evidence, the accused was examined under Section 313 Cr.P.C. and he denied all the incriminating evidence against him.

Learned SDJM, Malerkotla, after going through evidence, convicted and sentenced the accused-petitioner as stated above. An appeal was filed by the petitioner and learned Addl. Sessions Judge, Sangrur, vide judgment dated 23.09.2011 accepted the appeal and set aside the judgment of conviction and order of sentence and case was remanded back for proceeding afresh.

Learned Addl. Sessions Judge, Sangrur, held from the evidence

that complaint was filed before cause of action had occurred or in other

words, before the accused had committed offence punishable under Section 138 of NI Act, learned SDJM, Malerkotla, instead of taking cognizance of complaint on 22.09.2006 itself ought to have waited up to the day cause of action to file this complaint had really arrived. Consequently, proceedings held against the accused from 2.09.2006 onwards stand vitiated having caused prejudice to him. Nonetheless, the accused is still in for no advantage on this count and is not absolved of his liability, if any, constitution commission of offence alleged against him.

The only point before this Court for determination is that the complainant was intimated by the bank vide memo dated 30.08.2006 regarding dishonouring of the cheque. The complainant dispatched the statutory notice under registered cover on 09.09.2006 calling upon the accused to make payment of amount mentioned in the cheque. The registered cover carrying notice was refused to be accepted by the accused and ultimately, instant complaint was filed on 22.09.2006. These facts itself show that in the legal notice the accused was asked to pay the amount within 15 days and 15 days have not elapsed when the complaint was filed prematurely and at that time, cause of action to the complainant would have arisen after the period from the service of the notice but the complainant had filed the complaint before cause of action had arisen to him.

Learned Addl. Sessions Judge, Sangrur, after relying upon the law held that the Court should have waited for taking cognizance till the expiry of the period as provided under the Act.

Learned counsel for the revision petitioner cited law laid down by the Hon'ble Supreme Court in *Yogendra Pratap Singh vs. Savitri*

under:-

*“37. A complaint filed before expiry of 15 days from the date on which notice has been served on drawer/accused cannot be said to disclose the cause of action in terms of clause (c) of the proviso to Section 138 and upon such complaint which does not disclose the cause of action the Court is not competent to take cognizance. A conjoint reading of Section 138, which defines as to when and under what circumstances an offence can be said to have been committed, with Section 142(b) of the NI Act, that reiterates the position of the point of time when the cause of action has arisen, leaves no manner of doubt that no offence can be said to have been committed unless and until the period of 15 days, as prescribed under clause (c) of the proviso to Section 138, has, in fact, elapsed. Therefore, a Court is barred in law from taking cognizance of such complaint. It is not open to the Court to take cognizance of such a complaint merely because on the date of consideration or taking cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer/accused has elapsed. We have no doubt that all the five essential features of Section 138 of the NI Act, as noted in the judgment of this Court in **M/s Kusum Ingots & Alloys Ltd. v. M/s. Pennar Peterson Securities Ltd. and ors. etc., AIR 2000 SC 954 : (2000) 2 SCC 745** and which we have approved, must be satisfied for a complaint to be filed under Section 138. If the period prescribed in clause (c) of the proviso to Section 138 has not expired, there is no commission of an offence nor accrual of cause of action for filing of complaint under Section 138 of the NI Act.*

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41. The other question is that if the answer to question (i) is in the negative, can the complainant be permitted to present the complaint again notwithstanding the fact that the period of one month stipulated under Section 142(b) for the filing of such a complaint has expired.

42. Section 142 of the NI Act prescribes the mode and so also the time within which a complaint for an offence under Section 138 of the NI Act can be filed. A complaint made under Section 138 by the payee or the holder in due course of the cheque has to be in writing and needs to be made within one month from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. The period of one month under Section 142(b) begins from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. However, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within the

prescribed period of one month, a complaint may be taken by the Court after the prescribed period. Now, since our answer to question (i) is in the negative, we observe that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to question (i). As we have already held that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the Court of sufficient cause. Question (ii) is answered accordingly."

I have gone through the above-cited judgment and the same fully applies in the present case.

In view of the law laid down by the Hon'ble Supreme Court, I find that premature complaint is to be dismissed. Therefore, matter cannot be remanded back and the judgment dated 23.09.2011 passed by learned Addl. Sessions Judge, Sangrur, is not as per law and the same is set aside. The complaint under Section 138 of the NI Act stands dismissed. The petitioner is acquitted of the charge framed against him.

Therefore, finding merit in the present petition, the same is allowed.

Since, petitioner Rupinder Singh is on bail, his bail/surety bonds stand discharged.

November 17, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No