

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

CRM-M-6744-2017 (O & M)
Date of decision :19.07.2017

Sumitra and another

...Petitioners

Versus

Jagat Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Shiv Kumar Kohli, Advocate and
Mr. Shashi Kumar Yadav, Advocate
for the petitioners.

SUDIP AHLUWALIA, J. (Oral)

None appears for the respondent, in spite of due service.

This petition has been filed for quashing of the summoning order dated 09.10.2015 passed by the Ld. Judicial Magistrate 1st Class, Rohtak in CC No.644 dated 10.06.2015.

The complainant/respondent had filed the complaint, under Section 138 of the Negotiable and Instruments Act, on the allegation that the petitioner No.1, who happens to be the Director of the Company (petitioner No.2) had taken a friendly loan of Rs.25 lacs from him in the month of January, 2014. Petitioner No.1, who is otherwise related to the complainant, did not return the loan but, on demand being raised by the complainant on 10.01.2015, issued a post dated cheque bearing No.361604 dated 21.02.2015, for repayment of the aforesaid loan amount, which was subsequently dishonoured by the Bank with the endorsement 'Exceeds Arrangement'. The complainant, therefore, sent a legal notice to the petitioners on 12.03.2015 (Annexure P-2). Its contents were, however,

denied on behalf of the petitioners in their reply dated 06.04.2015 (Annexure P-3). Thereafter, the complainant presented the cheque for encashment but it was again dishonoured with the same remarks after which he issued a fresh legal notice (Annexure P-4) on 13.05.2015 and followed it up by filing the complaint in the learned Court below (Annexure P-5) on 10.06.2015.

As noted by a Co-ordinate Bench of this Court in the previous order passed on 01.03.2017, 'filing of complaint on the basis of second legal notice is an abuse of process of law.'

Learned counsel for the petitioner has relied upon the decision of the Apex Court in **Sadanandan Bhadran vs Madhavan Sunil Kumar, 1998 (6) SCC 514**, wherein it was inter alia held as follows:

“Now, the question is how the apparently conflicting provisions of the Act, one enabling the payee to repeatedly present the cheque and the other giving him only one opportunity to file an complaint for its dishonour, and that too within one month from the date the cause of action arises, can be reconciled. Having given our anxious consideration to this question, we are of the opinion that the above two provisions can be harmonised, with the interpretation that on each presentation of the cheque and its dishonour a fresh right – and not cause of action – accrues in his favour. He may, therefore, without taking pre-emptory action in exercise of this such right under clause (b) of Section 138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But, once he

gives a notice under clause (b) of Section 138 he forfeits such right for in case of failure of the drawer to pay the money and the cause of action for filing the complaint will arise. Needless to say, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawar, expires.” (Emphasis added)

Facts of the present case are squarely covered by the aforesaid decision of the Supreme Court as in the petition it has been admitted that the complainant did in fact present the cheque on two separate occasions and each time after dishonour of the same, followed it by sending a legal notice to the petitioners. Following the aforesaid decision of the Supreme Court, it is clear that once the cheque had been dishonoured and legal notice was sent to the petitioners, the complainant forfeited his right to re-present the same again even, assuming that he did so under any persuasion.

In the circumstances, this Court is of the opinion that continuation of the criminal complaint in the learned Court below is an abuse of the process of law.

The impugned summoning order and all further proceedings arising out of CC No.644 dated 10.06.2015 are accordingly quashed.

19.07.2017
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(SUDIP AHLUWALIA)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No