

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-26798-2017 (O&M)

Date of decision: 15.10.2018

The Mobile Store Services Ltd. and others

...Petitioners

Versus

M/s Beetel Teletech Ltd.

...Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Saurabh Bhardwaj, Advocate
for the petitioners.

Mr. Harsh Chopra, Advocate and
Mr. K.P. Singh, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of the impugned order dated 03.12.2016 (Annexure P-4), vide which the trial Court has summoned the petitioners under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act') in criminal complaint No.20314/SS/2016 dated 02.07.2016 titled as M/s Beetel Teletech Ltd. Vs. M/s The Mobile Store Services Ltd. and others and the order dated 22.05.2017 (Annexure P-5) passed by the revisional Court, vide which the revision petition filed by the petitioners, was dismissed.

Brief facts of the case are that the aforesaid complaint was presented on 27.06.2016 before the Court of Shri Sukhdev Singh, Id. JMIC,

Gurugram, who was performing functions of Duty Magistrate during summer vacations. Ld. Duty Magistrate ordered that complaint be presented before ld. CJM, Gurugram, on 02.07.2016 for passing appropriate orders and directed complainant to appear before the court of ld. CJM, Gurugram.

Ld. Chief Judicial Magistrate, Gurugram, vide an order dated 02.07.2016 assigned the case to the court of Mrs. Renu Solkhe, ld. JMJC, Gurugram for disposal in accordance with law and directed complainant to appear before said court on 02.07.2016 itself. The complainant as such appeared before the court of Mrs. Renu Solkhe on 02.07.2016, who ordered that notice of application for condonation be given to the accused for 08.09.2016. However, on the said date, counsel for the complainant made a statement before the court to the effect that complainant did not want to press the application for condonation of delay since the complaint had been filed within the statutory period. As such ld. Magistrate dismissed application for condonation being not pressed and adjourned the matter for 27.10.2016 for recording preliminary evidence of the complainant.

The complainant on 03.12.2016 in his preliminary evidence examined Nitin Lavania, Assistant Manager as CW1 and produced documents Ex.CW1/1 to Ex.CW1/49, which included invoices, dishonoured cheques, memos of the banks, copies of statutory notices etc. Ld. Magistrate vide impugned order dated 03.12.2016 summoned accused-revisionists under Section 138 of N.I. Act on these accusations levelled in the complaint that complainant-company had sold goods to the accused company by way of various invoices. Accused in discharge of payments thereof drawn 19

cheques totaling for Rs.9,50,00,000/- (nine crores fifty lakhs only) on their banker in favour of complainant-company but said cheques, on being presented for realization, returned back dishonoured with the report that payment stopped by drawer. As such complainant sent legal notice dated 07.05.2016 calling upon accused to pay the amount within 15 days from the date of receipt of notice. As per recitals in the complaint, said statutory notice was received by the accused on 10.05.2016. Since payments were not made, so complaint was presented in the court on 27.06.2016.

The trial Court, thereafter, summoned the petitioners to face the trial vide impugned order dated 03.12.2016. The petitioner preferred a revision petition before the Additional Sessions Judge and the same was also dismissed vide impugned order dated 22.05.2017. The present petition has been filed challenging the aforesaid orders.

Learned counsel for the petitioners submits that at the time of filing the complaint, the complainant had filed an application under Section 5 of the Limitation Act for condonation of delay, on 02.07.2016, however, later on the said application was dismissed as withdrawn on 09.09.2016 and therefore, the trial Court has erroneously taken cognizance of the complaint, as the application for condonation of delay was withdrawn by the complainant. It is further submitted that prior to summoning the petitioners, no enquiry under Section 202 Cr.P.C. was conducted as the petitioners are residing outside the jurisdiction of the trial Court.

Learned counsel for the petitioners further submits that the Courts below have wrongly held that the original complaint was filed before

the trial Court on 22.05.2016 and the same was within limitation, whereas it was not within the limitation. Learned counsel has further submitted that once an application was filed and the same was withdrawn on 09.09.2016, the Court was supposed to take cognizance on that date, when the application was decided.

In reply, learned counsel for the respondent-complainant has submitted that the application for condonation of delay was filed inadvertently and since the complaint was filed within limitation, same was withdrawn and mere filing of the application and its subsequent withdrawal will have no bearing on the merits of the complaint, which was filed in time.

For a reference, the operative part of the order passed by the revisional Court is reproduced as under: -

“Arguments heard.

Revisional Court while exercising its powers of revision under Section 397 Code of Criminal Procedure, 1973 has to examine the record of any proceedings before inferior criminal court and to see whether impugned order has been passed correctly, legally on the basis of evidence on record.

A perusal of record of lower court reveals that all the 19 cheques bearing date 9.3.2016 were presented within the period of validity for realisation by complainant in its banker. But said cheques were dishonoured and returned back with the remarks payment stopped by drawer as indicated from returned cheques accompanied with banker's memos dated 8.4.2016 Ex.CW1/5 to Ex.CW1/42. It has further been revealed that complainant sent statutory notice bearing dated 6.5.2016 Ex.CW1/43 requesting the accused company to pay cheque amount of Rs.9,50,00,000/- with interest at the rate of 18% within 15 days from the date of

receipt of notice. Said notice was sent vide postal receipt dated 7.5.2016 Ex.CW1/44, which was followed by track report dated 10.5.2016 Ex.CW1/45. This fact is further on record that accused sent reply dated 16.5.2016 Ex.CW1/46, intimating that accused received notice on 10.5.2016.

Accused company however, denied averments made in the notice by submitting that in fact accused company handed over 50 cheques each amounting to Rs.50,00,000/- to the complainant on 9.3.2016 bearing cheque numbers from 108405 to 108404 totalling Rs.25 crores as refundable security deposit towards carrying out of business transaction. In this way accused company blamed complainant for making out a false case of cheque bouncing.

Complainant, as already referred above filed criminal complaint in the court on 27.6.2016, which was presented before Duty Magistrate, Gurugram since there were summer vacations. Duty Magistrate passed an order dated 27.6.2016 ordering that matter be listed before Id.CJM, Gurugram on 2.7.2016. Accordingly case was listed on 2.7.2016 before Id.CJM,Gurugram who had entrusted the case to the court of Mrs.Renu Solkhe, Id.JMIC, Gurugram, who passed impugned summoning order dated 3.12.2016.

Section 142 (b) of the Act is reproduced below:

"Cognizance of offences-Notwithstanding anything contained in the Code of Criminal Procedure, 1973-

- a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be the holder in due course of the cheque;*
- b) such complaint can be made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138;*

Provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period;

c). no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

As per proviso of section 138 of the Act complaint can be filed if the cheque has been presented to the bank within a period of six months from the date on which it is drawn and payee makes a demand for the payment of the amount by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding return of the cheque as unpaid and the drawer of said cheque fails to make the payment of the said amount of money to the payee within 15 days from the receipt of said notice.

In the case in hand, notice was received by accused on 10.5.2016, a fact which has also been admitted by accused in reply dated 16.5.2016 Ex.CW1/46. As such as per above referred section 138 (c) cause of action to file complaint had arisen after elapse of fifteen days period, which began to commence from 26.5.2016. As per section 142 (b) complaint could be filed within one month from the date on which the cause of action had arisen. As per law laid down by Hon'ble Supreme Court of India in Saketh India Ltd., & others Vs. India Securities Ltd., 1999 SCC, 1, which has been reiterated in subsequent ruling in Econ Antri Ltd. Vs. Rom Industries Ltd. & another decided on 26.8.2013 period of limitation u/s 142(b) of the N.I.Act has to be reckoned by excluding the date on which the cause of action arose. As such in the case in hand 26.5.2016 was required to be excluded, meaning thereby statutory period

of limitation of one month began to commence from 27.5.2016 and it was available upto 27.6.2016, on which complaint was presented before Duty Magistrate since there were summer vacations. As such complaint was filed well within period prescribed under the Act. Hence, ld.Magistrate was right in taking cognizance of the offence. As such ratio of rulings supra relied upon by ld.counsel for revisionists on the point of condonation of delay and limitation, becomes distinguishable in the facts of the case in hand, in which complaint was filed within prescribed period. Hence, this ground of revision does not carry any merit that complaint was instituted without condonation of delay.

As regards another ground of revision regarding validity of statutory notice, it has been found that accused company in its reply dated 16.5.2016 Ex.CW1/46 admitted the fact of receipt of notice on 10.5.2016. Although in the said reply accused blamed complainant of making out a false case of cheque dishonoured since cheques in question were given on account of refundable security deposit towards carrying out the agreed business transaction, but accused company had not taken any objection regarding non-service of notice on other persons in charge of or responsible to the accused company. Hence, this ground of revision that notice was not properly served as per requirement of section 141 of the Act also does not carry any merit.

Due to aforesaid reasons, revision petition carries no merit and same is hereby dismissed. Parties through their counsels are directed to appear before ld.trial court on the date already fixed there.”

After hearing learned counsel for the parties, I find no ground to interfere in the findings recorded by both the Courts below.

A perusal of the record shows that the cheques dated 09.03.2016 were presented before the bank within the validity period and the same were dishonoured vide banker's memo dated 08.04.2016. Thereafter, the complainant sent a legal notice on 06.05.2016 asking the accused company to pay the cheques amount along with interest @18% per annum within 15 days of receipt of the notice. The said notice was issued through postal receipt dated 07.05.2016 and the accused sent a reply on 16.05.2016 acknowledging that the notice was received on 10.05.2016. Thereafter, the complaint was filed on 27.06.2016 i.e. within the period of limitation and therefore, the application filed by the complainant for condonation of delay was mere an irregularity and the same was later on withdrawn on 09.09.2016.

The argument raised by learned counsel for the petitioners that limitation should be calculated from 09.09.2016, when the application for condonation of delay was withdrawn, is without any basis, as it is apparent that on 27.06.2016 itself, the complaint was listed before the Duty Magistrate and was ordered to be listed before the Chief Judicial Magistrate on 02.07.2016 and therefore, the complaint was filed well within the period of limitation as per Section 142(b) of the N.I. Act. The argument of learned counsel for the petitioners that the trial Court has not followed the procedure under Section 202 Cr.P.C., is erroneous and is liable to be rejected, in view of the judgment of the Hon'ble Supreme Court **Devendra Kishanlal Dagalia Vs. Dwarkesh Diammonds Pvt. Ltd. and others, 2014 (1) RCR (Crl.) 158**, wherein it is held as under: -

*“The question concerning the jurisdiction of Magistrate to issue summons fell for consideration before this Court in **M/s. Escorts Limited vs. Rama Mukherjee, 2013 (4) RCR (Civil) 838 : 2013 (4) RCR (Criminal) 771 : 2013 (6) Recent Apex Judgments (R.A.J.) 64 : (Criminal Appeal No.1457 of 2013), 2013 (11) Scale 487.** In the said case the Court noticed the earlier decision in **K. Bhaskaran vs. Shankaran Vaidhyam Balan & Anr., 1999 (4) RCR (Criminal) 309 : (1999) 7 SCC 510.** In the light of the language used in Section 138 of the Act, the Court found five components in Section 138 of the Act, namely,*

- (1) drawing of the cheque;*
- (2) presentation of the cheque to the bank;*
- (3) returning the cheque unpaid by the drawee bank;*
- (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount; and*
- (5) failure of the drawer to make payment within 15 days of the receipt of the notice.”*

Therefore, the trial Court, in whose jurisdiction, the cheques were presented and dishonoured, has jurisdiction in the case.

In view of the findings recorded above, I find no merit in the present petition and the same is hereby dismissed.

Since the complaint pertains to the year 2016, the trial Court is directed to conclude the trial expeditiously.

[ARVIND SINGH SANGWAN]
JUDGE

15.10.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No