

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

207

**CRM-M-39328-2012 (O&M)
Decided on : 14.05.2018**

Jagdish Chander Kaushik

...Petitioner

Versus

Raj Rani

...Respondent

CORAM : HON'BLE MR. JUSTICE P.B.BAJANTHRI

Present : Mr.Sanjiv Gupta, Advocate for the petitioner.

Mr. Jasbir Rattan, Advocate for the respondent.

P.B.BAJANTHRI, J. (ORAL)

In the instant petition, petitioner has sought for quashing of complaint case No. 1019 dated 12.11.2012 under Sections 138 and 142 of Negotiable Instruments Act (For short 'NI Act') (Annexure P1) and order dated 12.11.2011 passed by the Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhari (Annexure P2).

2. There was a transaction among the parties. On 30.04.2011 petitioner is stated to have issued a cheque in favour of respondent-Raj Rani and cheque was presented in the month of September, 2011 which was dishonoured. Consequently, legal notice was sent on behalf of respondent-Raj Rani on 27.09.2011. It was not timely replied by the petitioner. It was replied on 07.11.2011 along with demand draft for a sum of Rs.1 Lac. It was

received by the respondent and encashed on 16.11.2011. In the meanwhile respondent filed a complaint where summons were issued on 12.11.2011 itself. Petitioner is stated to have submitted application on 25.01.2012 for discharge and compounding the offence and it was dismissed on 28.05.2012. Learned counsel for the petitioner submitted that JMIC, Yamuna Nagar at Jagadhari has failed to appreciate application dated 25.01.2012 for the purpose of compounding and he has proceeded on the ground that there is no consent on behalf of the respondent. Learned counsel for the petitioner in support of the petitioner's contention relating to non-acceptance of the petitioner's application dated 25.01.2012 for compounding the offences relied on Supreme Court decision reported in 2017 AIR SC 4595 *M/s Meters and Instruments Private Limited and another versus Kanchan Mehta* wherein Supreme Court has held that when if there is no consent of the parties court can examine the matter and proceed to close the proceedings and discharge the accused.

3. Per contra, learned counsel for the respondents while resisting the contention of the petitioner submitted that reply to notice dated 27.09.2011 is beyond the stipulated period. Therefore, JMIC, Yamuna Nagar at Jagadhari has taken note of the said issue and proceeded to reject the petitioner's application for compounding. That apart, it is argued that there is delay of more than 6 months in issuing demand draft that too after issuance of legal notice. Therefore, rightly, JMIC, Yamuna Nagar at Jagadhari has taken cognizance of the complaint.

4. Heard the learned counsel for the parties.

5. No doubt there is negligence on the petitioner's part in not replying to the notice dated 27.09.2011 within stipulated period. However,

demand draft has been furnished along with the reply to the notice to the respondents and it was encashed on 16.11.2011 by presenting the demand draft. JMIC, Yamuna Nagar at Jagadhari should have appreciated these facts and circumstances. Even if there is no consent for compounding the offence by the respondent, JMIC should have appreciated the factual aspect to the extent that within 4 days from the date of complaint, demand draft has been received by the respondent i.e. on 16.11.2011 and it was presented and encashed. Supreme Court in ***Kanchan Mehta's*** case cited (supra) in para 18 (iii) held as under:-

8 (iii) Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused."

6. In view of the principle laid down by the Supreme Court in the aforesaid case, JMIC, Yamuna Nagar at Jagadhari should have exercise discretionary power for closing the proceedings and discharge the petitioner. In view of these facts and circumstances, complaint case No. 1019 dated 12.11.2012 under Sections 138 and 142 of Negotiable Instrument Act (For short NI Act) (Annexure P1), summoning order dated 12.11.2011 passed by the Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhari (Annexure P2) and consequential proceedings arising out of this complaint are set aside. Petition stands allowed. However, petitioner is liable to pay interest on the amount of Rs.1 Lac due to delay in settling the matter from April, 2011 to November, 2011. Respondent is entitled to interest @ 9% per annum on the amount of Rs.1 Lac for the period from 1.5.2011 to 16.11.2011. Same shall be calculated and demand draft be

issued to the respondent-Raj Rani within a period of 3 months from today failing which respondent-complainant is entitle to litigation cost of Rs.10,000/-.

(P.B. BAJANTHRI)
JUDGE

14.05.2018
pooja saini

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