

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

CRM-M-43399-2014

Date of decision:09.07.2018

Kulbir Singh

.....Petitioner

Versus

Updesh Singh Nagpal and others

.....Respondents

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

Present: Mr. M.S. Uppal, Advocate
for the petitioner.

Mr. Damanjit Sandhu, Advocate
for respondents No.1 and 2.

Mr. Luvinder Sofat, AAG, Punjab
for respondent No.3.

P.B. BAJANTHRI, J. (ORAL)

Instant petition has been filed by the petitioner, who has challenged the order of the Judicial Magistrate Ist Class, Patiala dated 20.11.2014 whereby the complaint of the petitioner i.e. complaint No.2541-T dated 04.03.1992 titled as Kulbir Singh vs. Updesh Singh Nagpal and another filed under Section 138 of the Negotiable Instruments Act, 1881 (' N.I. Act' – for short) returned to the petitioner for being filed before the Court of competent jurisdiction.

2. The learned counsel for the petitioner has submitted that in

the aforesaid complaint even though it was listed for evidence, however, due to non-cooperation of the respondents No.1 and 2, the matter could not be proceeded. Thus there is sufficient material in this case to show that the matter was at the stage of recording evidence. It was further contended that in view of the insertion of Section 142-A of the N.I. Act with reference to the Bill introduced in the Lok Sabha on 06.05.2015, therefore, order dated 20.11.2014 passed by learned Judicial Magistrate Ist Class, Patiala is liable to be set aside, as the insertion would operate from the inception of the N.I. Act.

3. Per-contra, learned counsel for the respondents has submitted that the petitioner has the grievance before the jurisdiction before competent Courts at Delhi pursuant to the order dated 20.11.2014 of the learned Judicial Magistrate Ist Class, Patiala. As on 20.11.2014 insertion of Section 142-A of the N.I. Act was not existing. Consequently petitioner has not made out the case so as to interfere with the order of Judicial Magistrate Ist Class, Patiala dated 20.11.2014.

4. Heard learned counsel for the parties.

5. The crux of the matter in the present petition is '*whether order dated 20.11.2014 could be interfered or not*'? No doubt, Judicial Magistrate Ist Class, Patiala proceeded to pass an order with reference to **Dashrath Rup Singh Rathod Versus State of Maharashtra and Another**, dated **01.08.2014** in **Criminal Appeal No.2287 of 2009**, in orders, interpretation of Section 145 (2) of the N.I. Act to the extent that if the recording of evidence has not been commenced, the trial Court is left with no other option except to return the case of complainant. In the

present case, even though the matter is at the stage of recording of evidence, however, the recording of evidence had not commenced, therefore, there is no infirmity in respect of order dated 20.11.2014 of learned Judicial Magistrate Ist Class, Patiala to that extent. However, in view of the latest development to the extent that insertion of Section 142-A of the N.I. Act that inserting the aforesaid Section as statutory provisions relates from the inception of N.I. Act 1881.

6. In view of these facts and circumstances the order dated 20.11.2014 passed by learned Judicial Magistrate Ist Class, Patiala is hereby set aside. Consequently, the complaint No.2541-T dated 04.03.1992 titled as Kulbir Singh vs. Updesh Singh Nagpal and another is restored in the Court of learned Judicial Magistrate Ist Class, Patiala.

Parties are hereby directed to appear before learned Judicial Magistrate Ist Class, Patiala concerned on 31.07.2018.

09.07.2018
Gaurav Sorot

(P.B. BAJANTHRI)
JUDGE

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| 1. | Whether reportable? | No |
| 2. | Whether reasoned / speaking? | Yes |