

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 2788 of 2015

Date of decision: October 5, 2018

Rajpal

... Petitioner

versus

Ritesh Jindal

.... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sushil Jain, Advocate
for the petitioner.

Mr. Sanjiv Kumar Aggarwal, Advocate
for the respondent.

RAMENDRA JAIN, J.(Oral)

Through this revision under Section 401 Cr.P.C challenge has been laid to the judgment dated 29.4.2015 passed by the first appellate court, whereby judgment of conviction and order of sentence dated 31.3.2014 of the trial court holding the respondent guilty under Section 138 of the Negotiable Instruments Act, 1881(hereinafter referred to as 'the Act') and sentencing him to undergo simple imprisonment for a period of one year and to pay compensation of ₹32 lacs was set aside while dismissing the complaint of the petitioner.

In nutshell, in a complaint under Section 138 of the Act filed by the petitioner, after holding trial, the trial court convicted the respondent in the manner as narrated above. Being aggrieved, respondent approached Ist appellate court, who accepting his appeal, set aside the aforesaid judgment dated 31.3.2014.

For that reason, the complainant has approached this Court through the instant revision petition for setting aside judgment dated

29.4.2015 of the Ist appellate Court.

Learned counsel for the petitioner has relied upon judgment of Hon'ble the Supreme Court in **Yogendra Pratap Singh Vs. Savitri Pandey and another 2014 (4) RCR (Criminal) 321** to contend that the first appellate court has failed to comply with its second part, which has permitted a complainant to file fresh complaint, within a period of 30 days from the date of dismissal of his complaint, being filed pre-maturely. Further relying upon another judgment passed by the Co-ordinate Bench in CRM-M No. 42222 of 2013 **Aju's Mines and Minerals Vs. M/s JSC Ispat Private Limited**, learned counsel submits that liberty may be granted to the petitioner to file a fresh complaint.

On the other hand, learned counsel for the respondent pleading the validity of the impugned judgment urged that no liberty was required to be sought by the petitioner for filing a fresh complaint, as soon as the impugned judgment came into existence. The petitioner suo motu without any permission could file a fresh complaint in view of ratio decidendi culled out in **Yogendra Pratap Singh's case (supra)** which in fact helps the respondent and not the petitioner.

Having given thoughtful consideration to the submissions made by both the counsel, I find that the instant revision petition is devoid of merits for the reasons to follow:-

It is not disputed that the petitioner had filed his complaint under Section 138 of the Act pre-maturely, before expiry of the statutory period as envisaged under Section 142 of the Act. Similar situation has been dealt with by the Apex Court in **Yogendra Pratap Singh's case (supra)**. According to the dictum laid down in the said authority, no liberty was required to be sought by the petitioner from the

court for filing a fresh complaint after expiry of the prescribed period. The petitioner suo motu could file a fresh complaint under Section 138 of the Act against the respondent before the trial court. Therefore, instead of filing revision petition before this Court, the petitioner ought to have adopted the recourse of filing a fresh complaint before the trial court against the respondent.

The facts and circumstances of the judgment rendered by a Co-ordinate Bench of this Court in **Ajju's Mines & Minerals's case (supra)** are not identical to the facts of the instant case, inasmuch as in that case revisions were filed in the year 2013. By that time, there were conflicting judgments on the above issue. Therefore, the matter was referred to larger Bench of Hon'ble the Supreme Court before whom a reference for resolving conflicting opinions was made. Finally vide judgment in **Yogendra Pratap Singh's case (supra)** dated 19.9.2014 liberty was granted to the petitioners to file a fresh complaint, whereas in the instant case, petitioner has approached this Court much after passing of the judgment of the Apex Court. Therefore liberty aforesaid cannot be granted to the petitioner for not adopting proper legal recourse, in consonance with the ratio decidendi laid down in **Yogendra Pratap Singh's case (supra)** by the Apex Court.

Accordingly, the revision petition stands dismissed.

(RAMENDRA JAIN)
JUDGE

October 5, 2018
archana

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No