

HIGH COURT OF CHHATTISGARH, BILASPURCr.M.P.No.22 of 2014

Radhakant Bagadiya, S/o Gopal Bagadiya, aged about 35 years,
 proprietors M/s. Vitrag Sales, Vidhansabha Marg, Police Station
 Mowa, Raipur, Tahsil & District Raipur, Civil & Revenue District
 Raipur (CG)

--- Petitioner

Versus

1. M/s. Hariom Ingots & Power Pvt. Ltd. Through : Director, Sandeep Agrawal, S/o Santosh Agrawal, aged about 31 years, R/o Plot No.59, 60 & 61 Light Industrial Area, Bhilai, Police Station Jamul, Tahsil & District Durg (CG)
2. State of Chhattisgarh through P.S. Jamul, Dist. Durg

--- Respondents

For Petitioner	:	Mr.Bhaskar Payashi, Advocate
For Respondent No.1	:	Mr.Romir Goyal, Advocate
For Respondent No.2	:	Ms Shivali Dubey, P.L.

Hon'ble Shri Justice Sanjay K. AgrawalOrder on Board22/04/2019

1. The petitioner herein is standing and facing trial for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called as "the Act of 1881"). The petitioner after appearing in the proceedings initiated on the basis of complaint filed by the complainant under Section 138 of the Act of 1881, filed an application for discharge under Section 259 read with Section 245 of the CrPC, which was rejected by the Judicial Magistrate First Class, Durg and upheld by the revisional Court by the impugned order, against which, this petition under Section 482 of the CrPC has been filed.

2. Mr.Bhaskar Payashi, learned counsel for the petitioner, would

submit that cheque issued by the petitioner was dishonoured on 14.5.2008 and respondent No.1/complainant sent legal notice to the petitioner on 27.5.2008, which was replied by the petitioner on 2.6.2008. Cheque was presented second time before the bank on 28.7.2008, which was again dishonoured on 29.7.2008 and again the complainant sent legal notice to the petitioner on 13.8.2008 and thereafter, complaint was filed on 22.9.2008 on the basis of second notice dated 13.8.2008 suppressing the material fact that first notice was issued on 27.5.2008 and reply was filed by the petitioner on 2.6.2008, as such, complaint filed after dishonour of cheque for second or successive time and after issuance of second notice under proviso to clause (b) of Section 138 of the Act of 1881 is not maintainable and liable to be quashed. He would further submit that the trial Court as well as the revisional Court went wrong in rejecting the application filed by the petitioner under Section 259 read with Section 245 of the CrPC. Therefore, the order passed by the trial Court as affirmed by the revisional Court deserves to be set-aside.

3. On the other hand, Mr.Romir Goyal, learned counsel for respondent No.1, would submit that in view of the judgment rendered by the Supreme Court in the matter of Sicagen India Ltd. v. Mahindra Vadineni and Others¹, complaint filed after dishonour of cheque for second or successive time and after issuance of second notice is maintainable and therefore, both the Courts below are absolutely justified in rejecting the application, which warrants no interference

1 2019 SCC OnLine SC 40

by this Court under Section 482 of the CrPC.

4. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. The issue raised hereinabove whether the prosecution based on successive dishonour of cheque is maintainable or not is no longer res-integra. Their Lordships of the Supreme Court in Sicagen India Ltd. (supra) took note of Three-Judge Bench decision of the Supreme Court in the matter of MSR Leathers v. S. Palaniappan and another² in which Their Lordships have held as under:-

“33. Applying the above rule of interpretation and the provisions of Section 138, we have no hesitation in holding that a prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default which was followed by statutory notice and a failure to pay had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honor their commitments made in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other similar reason. There is in our opinion no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second or successive time.”

6. Reverting to the facts of the present case in the light of principle of

² (2013) 1 SCC 177

law laid down by the Supreme Court in the above-stated judgments (supra), it is quite vivid that when the cheque was dishonoured for second or successive time, the complainant issued legal notice to the petitioner on 13.8.2008, but no reply was filed by the petitioner and thereafter, complaint was filed by the complainant on 22.9.2008 on the basis of which, cognizance of offence under Section 138 of the Act of 1881 was taken by the Judicial Magistrate First Class, Durg, which cannot be said to be barred or cannot be said to be not maintainable in view of the decision of the Supreme Court in S. Palaniappan (supra), as such, both the Courts below are justified in rejecting the application for discharge of the petitioner.

7. Accordingly, the CrMP being devoid of merit is liable to be and is hereby dismissed. However, all the points raised by the petitioner herein are left open to be raised before the trial Court in accordance with law.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-