

HIGH COURT OF CHHATTISGARH, BILASPURCr.M.P.No.1259 of 2016

Premal Pradhan son of Arakshhit Pradhan, aged about 40 years,
resident of near Malsai Talab, Sector-3, Road No.17, Professor
Colony, Purani Basti, Raipur, Tahsil & District-Raipur (CG)

--- Petitioner

Versus

Gajpati Sahu son of Yadumani Sahu, aged about 45 years, resident
of near Tiranga Chowk, Kushalpur, Raipur, District Raipur (CG)
(Complainant)

--- Respondent

For Petitioner	:	Mr.D.N.Prajapati, Advocate
For Respondent	:	None present

Hon'ble Shri Justice Sanjay K. AgrawalOrder on Board01/05/2019

1. The cheque issued by the petitioner to the complainant/respondent herein was dishonoured on 2.8.2012, which was again presented on 4.8.2012, which was dishonoured on 7.8.2012 and again on 31.8.2012 it was presented, which was again dishonoured on 3.9.2012. The complainant served legal notice to the petitioner on 01.10.2012 and thereafter filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called as "the Act of 1881"), which was taken cognizance of by learned Judicial Magistrate First Class, Raipur, which was assailed by the petitioner to be barred by limitation, but he remained unsuccessful and in revision also, the order of the trial Court was maintained, against which this CrMP has been preferred.
2. Mr.D.N.Prajapati, learned counsel for the petitioner would submit that successive presentation of cheque is barred. For the first time,

cheque of the petitioner was dishonoured on 2.8.2012, thereafter legal notice could have been served and complaint could have been filed. He relied upon the judgment of the Supreme Court in the matter of Premchand Vijay Kumar v. Jaspal Singh and another, decided on 2.5.2005 and Tameshwar Vaishnav v. Ramvishal Gupta, decided on 5.6.2010.

3. None present for the respondent.
4. I have heard learned counsel appearing for the petitioner and considered the 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 another**¹ 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

¹ (2013) 1 SCC 177

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 law laid down by the Supreme Court in the above-stated judgments (supra), it is quite vivid that when the cheque was dishonoured finally, intimation was given to the petitioner on 3.9.2012 and within 30 days, legal notice was issued to him on 1.10.2012 and thereafter filed a complaint, which is strictly in accordance with law.
7. In the light of decision rendered by the Supreme Court in Sicagen India Ltd (supra) and MSR Leathers (supra), I do not find any merit in this CrMP.
8. Accordingly, the CrMP being devoid of merit is liable to be and is hereby dismissed. A copy of order be sent to concerned court by Email/fax.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-