

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-26379-2016 (O&M)

Date of decision: 16.07.2019

Yuvraj Agro Foods Pvt. Ltd. and others

..... Petitioners

Versus

M/s Mangat Ram Pawan Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Gautam Dutt, Advocate
for the petitioners.

Mr. N.K. Bansal, Advocate
for the respondent.

ANIL KSHETARPAL, J.

Quashing of complaint filed under Section 138 of the Negotiable Instruments Act, 1881 has been sought on the ground that the complaint when filed was not maintainable as the offence alleged against the petitioner was not made out.

Learned counsel for the petitioners has submitted that under Section 138(c) of the Negotiable Instruments Act, 1881, the offence is complete only after drawer of such cheque(s) fails to make payment of the said amount of money to the payee or to the holder in due course of cheque, within 15 days of the receipt of said notice. He submits that in the present case, notice as required under Section 138(b) is stated to have been posted through registered post on 23.05.2016 to the petitioners from Jind to Delhi. He submits that even if it is assumed/presumed that the notice was served on the petitioners-accused on the next day i.e. 24.05.2016, still the

complaint, which was filed on 07.06.2016, was not maintainable as period of 15 days from the date of receipt of said notice had not expired and hence, no offence was made out. He in support of his contention relies upon a judgment passed by 3 Judges Bench in the case of Yogendra Pratap Singh Vs. Savtiri Pandey and another 2014(10) SCC 713.

On the other hand, learned counsel for the respondent has submitted that the petitioners have not pleaded that on which date the notice was received by them. He submits that what has been alleged in the petition is that the notice was sent on 23.05.2016 and therefore, the petition is not maintainable. He also submitted that let the petition be deemed to have been filed after expiry of 15 days.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the paper book.

It is undisputed that the complainant when appeared in preliminary evidence has stated that the notice dated 17.05.2016 was sent to the petitioners through registered post on 23.05.2016 vide three postal receipts vide memo Ex.C-4. The notice was posted from Jind (Haryana). In such circumstances, there is no possibility that the notice had reached the accused on the same day. If we assume that on 24.05.2016 notice has been received by the accused-petitioners, still 15 days has not expired when the complaint filed on 07.06.2016. In the aforesaid facts, Hon'ble Supreme Court in the case of Yogendra Pratap Singh (supra) had formulated two questions which are extracted as under:-

“(i) Can cognizance of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 be taken on the basis of a complaint filed before the expiry of the period of 15 days stipulated in the notice required to be served upon the drawer of

the cheque in terms of Section 138(c) of the Act aforementioned? And,

(ii) If answer to question No.1 is in the negative, can be complainant be permitted to present the complaint again notwithstanding the fact that the period of one month stipulated under Section 142(b) for the filing of such a complaint has expired?”

While answering those questions, Hon'ble Supreme Court has held that answer to question No.1 is in the negative. Hon'ble Supreme Court has held that such complaint is no complaint in the eye of law and therefore, the Court is barred in law from taking cognizance of such complaint. The Court has held that such complaint cannot be held maintainable merely because cognizance of the complaint has been taken by the Court after a period of 15 days from the date when the notice was served upon the accused.

In view of the aforesaid judgment, there is substance in the argument of learned counsel for the petitioners.

However, that is not the end of the matter. As noticed above, Hon'ble Supreme Court framed second question as extracted above and ultimately answered the same holding that under proviso to Section 142(b) of the Negotiable Instruments Act, 1881, the Court is entitled to condone the delay if the complainant satisfies the Court that he had sufficient cause for not making complaint within such time which is within one month from the date, the cause of action arise. The relevant discussion on this question is extracted as under:-

“Section 142 of the NI Act prescribes the mode and so also the time within which a complaint for an offence under Section 138 of the NI Act can be filed. A complaint made under Section 138 by the payee or the holder in due course of the cheque has to be

in writing and needs to be made within one month from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. The period of one month under Section 142(b) begins from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. However, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within the prescribed period of one month, a complaint may be taken by the Court after the prescribed period. Now, since our answer to question (i) is in the negative, we observe that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 138 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to question (i). As we have already held that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the Court of sufficient cause. Question (ii) is answered accordingly.”

In the present case, it is beyond any doubt that the complainant had filed the complaint on 07.06.2016 in which the petitioners-accused were summoned and thereafter, this petition is pending in this Court at the behest of the petitioners for the last more than approximately three years.

Keeping in view of the aforesaid facts and in view of the law laid down by the Hon'ble Supreme Court, the delay in filing the appeal shall stand condone if complainant-respondent files a fresh complaint within one month from the date of decision by this Court.

Accordingly, while allowing the petition and quashing the complaint, opportunity is granted to the complainant to file a fresh complaint on the same cause of action and such complaint if filed within one month from the date of decision of this Court, the same shall be treated within limitation.

In view thereof, the petition is allowed.

16.07.2019
D.Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No