

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

**Crl. Misc. No.M-32567 of 2017 (O&M)
Date of Decision: December 04, 2019**

Vikram Joshi

.....PETITIONER

VERSUS

M/s Raj Trading Company

.....RESPONDENT

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Gaurav Bhatia, Advocate for
Mr. G.P.S.Pathania, Advocate
for the petitioner.

Mr. N.S.Shekhawat, Advocate
for the respondent.

SURINDER GUPTA, J.(Oral)

Learned counsel for the petitioner at the very outset has argued that the complaint filed by respondent titled as ***M/s Raj Trading Company Vs. Chintpurni Foods Private Limited and others*** is premature as legal notice after dishonour of the cheque was sent on 06.07.2016 and was received by petitioner on 21.07.2016. The complaint filed on 22.07.2016, as such clear period of 15 days was not allowed to petitioner to answer the notice. In support of his contentions, he has relied upon the observations in the case of **Yogendra Pratap Singh Vs. Savitri Pandey, reported as 2015 (1) SCC (Civil) 92.**

Learned counsel for the respondent fairly concedes that the

complaint was premature. However, he seeks liberty to file fresh complaint as per the observations in the case of **Yogendra Pratap Singh (supra)**.

In the aforesaid case, the Hon'ble Apex Court had formulated two questions for consideration, which reads as follows:-

*“(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 the 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?”*

The question no.1 was answered in negative. However, it was observed that in such event the complainant can file a fresh complaint and seek condonation of delay in filing the complaint. Observations of Hon'ble Supreme Court to this effect in para 42 are reproduced as follows:

42. 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 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.

As per above observations of the Hon'ble Apex Court, this petition is allowed. The complaint filed by the respondent titled as M/s Raj Trading Company Vs. Chintpurni Foods Private Limited and others, is quashed, with liberty to the respondent to file a fresh complaint within a period of 30 days and seek condonation of delay in filing the complaint. The application, if so filed, shall be considered as per the spirit of observations

It is however, made clear that in the event of petitioner being summoned by the trial Court on the fresh complaint, he will be at liberty to challenge the order raising all the pleas, available to him and disposal of this petition will not be treated as bar in raising any other plea.

December 04, 2019

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**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No