IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-31055-2017
Date of Decision: 29.01.2020

M/s PS IT Zone ....Petitioner

Versus

M/s Rashi Peripherals Pvt. Ltd. .....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sunil Polist, Advocate, for the petitioner.

Mr. Sudhir Aggarwal, Advocate, for the respondent.

Harnaresh Singh Gill, J.

The prayer made in the present petition is for quashing of the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (for short `the Act') and the summoning order dated 28.01.2016 passed thereon and all consequential proceedings arising therefrom.

The respondent-complainant filed the aforesaid complaint with the averments that the petitioner had been purchasing wireless desktops, monitors, display cards and other accessories from the complainant since 2015. Against the purchase of 5 Logitech/Combo/Wireless Desktops, 5 Monitors and 2 Asus Display Cards, the petitioner had issued cheque No. 000758 dated 29.07.2015 for Rs.37,838/- drawn on State Bank of Bikaner & Jaipur, Kurukshetra, but when presented for encashment, the said cheque got dishonoured on 16.10.2015 with the remarks `account closed'. Thereafter, a notice under

Section 138(b) of the Act was issued by the complainant-respondent to the petitioner on 20.11.2015, but still no payment was made.

In the said complaint, the learned trial Magistrate, passed the summoning order dated 28.01.2016.

Learned counsel appearing for the petitioner has vehemently argued that the cheque in question was earlier presented by the complainant for encashment on 30.7.2015, but the same was returned unencashed on 31.7.2015. The legal notice issued by the complainant on 25.8.2015 was duly replied to by the petitioner on 10.9.2015. However, these material facts were concealed by the respondent-complainant, while filing the complaint before the trial Court inasmuch as averments only with regard to the presentation of the cheque for encashment on 14.10.2015 and its getting dishonoured on 16.10.2015 and further issuance of legal notice on 20.11.2015 were made in the complaint.

On the aforesaid premise, it is contended that the second notice issued by the complainant on 20.11.2015 is invalid, inasmuch as the cause of action to file the complaint would arise on the expiry of the 15 days from the date of issue of earlier legal notice on 25.8.2015. While relying upon the judgment of the Hon'ble Supreme Court in Econ Antri Ltd. Vs. Rom Industries Ltd. and another, (2014) 11 SCC 769, it is contended that the complaint filed by the complainant is time barred and hence not maintainable. Still further, reliance has also been placed upon the judgment of the Hon'ble Apex Court in N. Harihara Krishnan Vs. J. Thomas, 2017(4) RCR (Criminal) 41.

On the other hand, learned counsel appearing for the respondent has argued that there is no statutory bar to present the cheque again for encashment within its validity and that the complaint filed by the complainant on the basis of successive default on the part of the payee, is legally valid and maintainable. In support of his contention, he has relied upon the judgments of the Hon'ble Supreme Court in MSR Leathers Vs. S. Palaniappan and another, (2013)1 SCC 177 and M/s Sicagen India Ltd. Vs. Mahindra Vadineni & Ors., (2019)4 SCC 271.

The issue raised by the petitioner in the present petition is not res-integra. In MSR Leather's case (supra), it has been held by the Hon'ble Apex Court as under:-

> "31. 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 a 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 honour 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."

Very recently, the Hon'ble Supreme Court in M/s Sicagen India Ltd.'s case (supra), while relying upon MSR Leather's case (supra), has reiterated the aforesaid view.

It could not be shown by the learned counsel for the petitioner that the second presentation of the cheque was not within its validity period. The cheque is dated 29.07.2015. The same was presented for encashment on 30.7.2015 and was dishonoured on 31.07.2015. Second time, the cheque was presented for encashment on 14.10.2015, but it was dishonoured on 16.10.2015. Thus, taking the validity of the period of cheque, the cheque issued on 29.07.2015 was valid upto 28.10.2015 (i.e. three months' validity period).

The issue involved herein is not relating the period of limitation and hence the judgment in Econ Antri Ltd.'s case (supra) is not applicable in the present case. The said case deals only with the date on which the cause of action arises to initiate the proceedings.

In view of the above, I do not find any merit in the present petition. Hence, the same is dismissed.

(HARNARESH SINGH GILL)
JUDGE

29.01.2020
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No