

In the High Court of Punjab and Haryana at Chandigarh

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**CRM-M No. 42517 of 2021
Date of Decision: 24.11.2021**

Amit Sharma

.....Petitioner

Versus

Mamta Rani

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. P.S.Miglani, Advocate
for the petitioner.

Mr. Abhinav Jain, Advocate
for the respondent.

SURESHWAR THAKUR, J. (ORAL)

1. Complaint bearing No. 31216 of 4.12.2019, titled as Mamta Rani versus Amit Sharma, has been instituted in the Court of the learned Judicial Magistrate Ist Class, Ludhiana. The afore complaint is constituted under Section 138 of the Negotiable Instruments Act, 1881. After presentation of the afore complaint (supra), by the aggrieved complainant, before the learned Magistrate, the complainant in his preliminary evidence, tendered her affidavit Ex. CA, and, therewith became appended documents Ex. C1 to Ex. C5. The learned trial Magistrate, after perusing the afore tendered material, came to an opinion that a *prima facie* case, for commission of offence under Section 138 of the Negotiable Instruments Act, is made out against the accused, and, hence proceeded to summon the accused for facing a notice of accusation, with respect to the afore offence.

The accused becomes aggrieved from the afore made

summoning order, and, through his instituting the instant petition, before this Court, has cast a challenge thereto.

3. The learned counsel for the aggrieved accused, rested his submissions, upon the factum that since the intimation as made to the complainant with respect to the dishonour of the negotiable instrument concerned, by the banker concerned, on its presentation, before it, become received, as unveiled, in Ex. C-2 by him, on 1.10.2019. Therefore, since the imperative statutory condition precedent, for the complainant validly recouring the mandate of Section 138 of the Negotiable Instruments Act, besides also for the Magistrate concerned assuming valid jurisdiction, to take valid cognizance thereons, and as is comprised in Clause (B) of the proviso to Section 138 of the Negotiable Instruments Act, clause whereof stands extracted hereinafter, casts a statutory injunction upon the complainant, who is the holder in due course, to within one month from the proven date of, receipt of intimation by him, with respect to the, dishonouring of the apposite instrument, to rather issue a notice upon the accused.

“138(b) of the Negotiable Instruments Act- the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid”

4. Consequently, he argues that since it is unfolded by Ex. C-2 that the intimation with respect to the afore, inasmuch as qua dishonour of the negotiable instrument concerned, by the banker concerned, became received by the complainant on 1.10.2019. Therefore, he contends that the institution of complaint outside the period of 30 days therefrom, rather

makes the complaint to be barred by law, and also, contends that the learned trial Judge could not either take cognizance, nor assume jurisdiction. In support of the afore made submission, learned counsel for the aggrieved accused-petitioner herein, has made dependence upon a judgment of the Apex Court rendered, in case titled as ***Sivakumar versus Natarajan, 2009(3) RCR (Criminal) 365***, wherein in paragraph 11 thereof, para whereof stands extracted hereafter, the afore made expostulation of law occurs.

11. We may, however, at the outset notice that both clauses (a) and (b) of the proviso appended to [Section 138](#) of the Act employed the term "within a period". Whereas clause (a) refers to presentation of the cheque to the bank within a period of six months from the date on which it is drawn, clause (b) provides for issuance of notice "to the drawer of the cheque within thirty days of the receipt of information". The words "within thirty days of the receipt of information" are significant. Indisputably, intimation was received by the respondent from the bank on 3.12.2003.

The Parliament advisedly did not use the words 'from the date of receipt of information' in [Section 138](#) of the Act. It is also of some significance to notice that in terms of [Section 9](#) of the General Clauses Act, 1897, whereupon reliance has been placed by the High Court, the statute is required to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

The departure made from the provisions of [Section 9](#) of the General Clauses Act by the Parliament, therefore, deserves serious consideration."

5. However, after the recording of preliminary evidence, which resulted in the impugned order, being made, it is rather conjointly submitted by the learned counsels for the contesting litigants, that the complainant has

not yet stepped into the witness box, and, obviously has remained uncross-examined.

6. The learned counsel for the respondent-complainant submits, that even though, the afore unfoldments occurring in Ex. C-2, are both credible as well as authentic. However, he continues to submit before this Court, that the endorsement made thereon, is of the banker, and, that the relevant date inasmuch as 1.10.2019, as mentioned therein, and, whereat the banker concerned refused to honour the cheque concerned, rather does not comprise any proven awakened intimation to the respondent concerned, with respect to the afore factum. Therefore, he argues that the afore submission is lacking in merit. He further argues that the relevant credible intimation, with respect to the afore factum, was conveyed to him, through a courier, served by the bank, upon her. Thereafter, he makes a submission before this Court, that the date of his receiving the intimation (supra) from the banker concerned, through courier, rather becomes the relevant date, for the making(s) of a valid computation, with respect to the notice issued to the complainant, as carried in Annexure C-2, being within or outside the relevant period of 30 days, as stipulated in clause (B) of the provisio to Section 138 of the Act.

7. Since in the judgment (supra), the view as taken by the Hon'ble Supreme Court, becomes rested upon the factum that therein existed, no dispute with respect to the date of the apposite statutory intimation, being received by the complainant, from the banker concerned, and, thereupon, the Hon'ble Apex Court, made a conclusion that the transmitting, of a notice by the aggrieved, to the accused, hence being evidently outside the mandatorily enjoined period of 30 days therefrom. Therefore, the Hon'ble

Apex Court concluded that the afore statutory *sine qua none* appertaining to the validity of the complaint rather becoming breached. Contrarily, in the instant case, there is a deep and pervasive dispute *inter se* the contesting litigants, with respect to the proven date of receipt of statutory intimation by the complainant from the banker concerned, pointedly with respect to the dishonour of the negotiable instrument. Therefore, given the afore dispute, hence at this stage, it cannot be said with the completest firmness, that the assumption of jurisdiction by the learned trial Magistrate concerned, upon, the complainant (*supra*) is tainted or vitiated. It appears that till the deposition of the complainant, both in her examination-in-chief, and, in her cross-examination, is completely recorded, hence thereupto, no valid opinion can be firmly formed by this Court, that the afore statutory *sine qua none*, for a valid complaint, being instituted against the accused, is or is not breached, and also no conclusion, at this stage, can be made, that the assumption of jurisdiction upon the complaint, is or is not tainted.

8. In nutshell, the petition is premature, and, is disposed of as such, leaving liberty to the accused, to an appropriate stage, after conclusion of evidence, comprised in the completest recording of the testimony of the complainant, to, upon the apposite statutory intimation, as stated by the learned counsel for the complainant, being received through courier, from the banker concerned, becoming not proven, in accordance with in law, hence avail the appropriate remedy, in accordance with law.

9. Disposed of.

(SURESHWAR THAKUR)
JUDGE

November 24, 2021
Gurpreet