

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

Reserved on 11th October, 2022

Pronounced on 09th November, 2022

CRM-M-14055-2013

M/s Park Polymers

....Petitioner

versus

Subir Dass and another

...Respondents

CRM-M-14281-2013

M/s Park Polymers

....Petitioner

versus

Subir Dass and another

...Respondents

CRM-M-14282-2013

M/s Park Polymers

....Petitioner

versus

Subir Dass and another

...Respondents

CRM-M-21414-2013

M/s Park Polymers

....Petitioner

versus

Subir Dass and another

...Respondents

CRM-M-21415-2013

M/s Lakshmi Industries

....Petitioner

versus

Subir Dass and another

...Respondents

**CRM-M-14055-2013 and
other connected matters**

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CRM-M-21416-2013

M/s Lakshmi Industries

....Petitioner

versus

Subir Dass and another

...Respondents

CRM-M-21417-2013

M/s Lakshmi Industries

....Petitioner

versus

Subir Dass and another

...Respondents

CRM-M-21418-2013

M/s Lakshmi Industries

....Petitioner

versus

Subir Dass and another

...Respondents

CRM-M-22046-2013

M/s Lakshmi Industries

....Petitioner

versus

Subir Dass and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sandeep Jasuja, Advocate
for the petitioner.

None for the respondents.

PANKAJ JAIN, J. (ORAL)

The complainant has preferred the present petition under
Section 482 Cr.P.C. seeking quashing of the Order dated 1st of August, 2012

(Annexure P-2) passed by Judicial Magistrate 1st Class, Gurgaon, whereby complaint filed at his behest under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') stands dismissed and the order dated 28th of September, 2012 passed by the Sessions Judge, Gurgaon whereby aforesaid order Annexure P-2 stands affirmed in revision.

2. This is a bunch of nine petitions. All these petitions are being disposed off by a common order as they involve same questions of law in the backdrop of similar facts and are directed against the same set of respondents. So much so the orders impugned in the petitions read the same. Facts are being culled out from CRM-M-14055- 2013.

3. In these matters notice of motion was issued on 9th of July, 2013. After service of notice on the respondents following order was passed on 4th of November, 2014 :-

“It is reported by the office that notice issued to the respondents have been received back with the report of refusal.

Post for hearing on 22.01.2015.

Photo copy of this order be placed on the files of each connected cases.”

4. As per the complainant it is a proprietorship concern dealing with fiber rolls/raisin sheets etc. Respondent used to purchase material from the petitioner on credit basis. In order to discharge liability respondent issued cheque No.304763 dated 29th of February, 2012 for an

amount of Rs.1,56,634/- drawn on Bank of India. When presented, the said cheque was returned vide memo dated 26th of March, 2012 with the remarks, “exceeds arrangements”. Petitioner claims that on instruction of the respondent the cheque was again presented by him. However, the same was again dishonoured vide memo dated 18th of April, 2012 with the remarks, “payment stopped by the drawer”. Complainant further claims that demand notice as contemplated under the statute was sent by registered post to the respondent on 15th of May, 2012. The same was returned unclaimed with the remarks, “the recipient is out of station for indefinite period”. Another notice was sent through e-mail on 2nd of June, 2012. After the respondent failed to respond to the demand raised by the complainant, present complaint Annexure P-1 was filed against the respondents for offence punishable under Section 138 of the N.I. Act, on 16th of July, 2012. At the stage of summoning, Ld. Trial Court dismissed the complaint vide following order dated 1st of August, 2012 :-

“Today the case was fixed for consideration on the summoning point of accused. Argument heard. Ld. Counsel for the applicant argued that accused issued a cheque in discharge of his liability against the purchase item. Cheque got dishonored on 16.4.2012 with the remarks “Exceeds Arrangement” Thereafter a legal notice dated 15.5.2012 was sent to the accused which was returned unclaimed. Thereafter another legal notice dated 2 June 2012 was sent to the accused through E-mail and hence this complaint was filed on 16.7.2012.

In the present case the first legal notice was sent on 15.5.2012. So if limitation starts from this date complaint should have been filed on or before 30.6.2012. But in between complainant again sent another legal notice dated 2.6.2012 on the ground that earlier notice dated 15.5.2012 was returned unclaimed. But no document to prove this fact is placed on file. Complainant placed reliance on the following authorities :-

10 Vishwanath Ghosh Vs. Ramesh Chandra Sindhi 2011 (2) RCR (Civil) 418.

In case titled Haryana State Small Industries Vs Laxmi Agro Industries 2006(4) RCR (Criminal) 999 the court has held that if after sending of legal notice the accused assures the payment and on that assurance complainant present the cheque again, cheque got dishonored again notice sent after this dishonored is valid. But facts of this case are different.

The Hon'ble Supreme Court of India in case titled **Sadanandan Bhadran Vs. Madhavan Sunil Kumar (Supra)**

It is held that when payee sends 15 days notice and no payment was made by drawer, cause of action to file complaint arises in favour of payee. But if he did not file complaint fresh cause of action can not arise on every subsequent dishonored of cheque. Cause of action within in the meaning of Section 142(C) of Negotiable Instrument Act arises only once.

The cause of action arose on 15.5.2012 the second legal notice can not be taken into consideration for filing of complaint. So in the present case second legal notice can not be considered and complaint is barred by first legal notice and no application for condonation of delay is filed. Hence the complaint is dismissed with no order as to cost. File be consigned to the record room after due compliance.”

5. The impugned order was challenged by the complainant before the Revisional Court. The revision was also dismissed holding that : -

“10. Learned Trial Court was right in coming to a conclusion that cause of action cannot arise on any repeat dishonor of the same cheque. Cause of action in terms of Section 142 (b) of the Acts arises only once. For ready reference, the said provision is appended as below:

“(b) Such complaint is made within one month of the date on which the cause-of-action arises under clause (c) of the proviso to Section 138”

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period].”

11. When the cause of action on service of the first notice through registered post on 15.5.2012 had arisen on the said date, complaint was to be filed on nonpayment of the cheque amount within stipulated time after service of the said legal notice. Operative portion of impugned order of the learned Trial Court with approval is appended as below:

“The cause of action arose on 15.5.2012, the second legal notice can not be taken into consideration for filing of complaint. So in the present case second legal notice cannot be considered and complaint is barred by first legal notice and no application for condonation of delay is filed.”

12. In view of this factual matrix, when the revisionist is constantly exhuberating confidence that he need not seek condonation of delay in filing the revision petition, authorities reported as **Natraj @ T. Natrajan vs. P. Venkatachalam 2008 (2) RCR (Criminal) 409 (Madras)** and **R. Kanthimathi and 2 others Vs. Bank of India 2007 (4) RCR (Criminal) 191 (Madras)**, with due deference to the law laid down therein, are not applicable on the facts of the present case.

13. Looking from another angle, as case of the complainant as

pleaded in the complaint is nowhere to the effect that the first notice had not been served and when there is no such material or evidence either on the file, authorities reported as S.L. Construction and another vs. Alapati Srinivasa Rao and another 2009(2) DCR 322 (S.C.) and T. N. Unnikrishnan Vs. T.K. Ramankutty and another 2006 (2) DCR 517 (Kerala), with due deference to the law laid down therein, also does not support the case of the revisionist.

14. No illegality or irregularity in the impugned order in terms of Section 297 Cr.P.C. has been pointed out by the learned counsel for the revisionist/petitioner.”

6. The dates of cheque(s) along with number, amount, return memo with remarks, notice of demand, second notice of demand, date of filing complaint, date of order passed by Trial Court and date of order passed by Revisional Court in rest of the eight cases are tabulated here under :-

Sr. No.	Cheque/ Date	Amount	Return Memo Dated/ Remark	Notice of Demand	Second Notice of Demand	Date of filing Complaint	Date of Order passed by Trial Court	Date of Order passed by Revisional Court
1	304308/ 07.02.12	97797	02.05.12 Payment Stopped	15.05.12	02.06.12	16.07.12	01.08.12	28.09.12
2	304145/ 24.04.12	91425	25.04.12 Payment Stopped	15.05.12	02.06.12	16.07.12	01.08.12	28.09.12
3	304114/ 13.04.12	91465	16.04.12 Exceeds Arrangement	15.05.12	02.06.12	16.07.12	01.08.12	28.09.12
4	304762/ 29.02.12	273825	02.05.12 Payment Stopped	15.05.12	02.06.12	16.07.12	01.08.12	28.09.12

5	303993/ 14.01.12	255619	02.05.12 Payment Stopped	15.05.12	02.06.12	16.07.12	01.08.12	28.09.12
6	304115/- 13.04.12	150187	16.04.12 Payment Stopped	15.05.12	02.06.12	16.07.12	01.08.12	28.09.12
7	304186/ 26.03.12	251392	02.05.12 Payment Stopped	15.05.12	02.06.12	16.07.12	01.08.12	28.09.12
8	304146/ 24.04.12	159363	25.04.12 Payment Stopped	15.05.12	02.06.12	16.07.12	01.08.12	28.09.12

7. Ld. Counsel for the petitioner submits that the Trial Court erred in dismissing the complaint. He submits that as per provision contained in Section 142 of the Act, the complaint is to be filed within one month of the date on which the cause of action arises under Clause (c) of proviso to Section 138 of the Act. As per proviso (c) appended to Section 138 the cause of action arises when the drawer of cheque fails to make a payment to the payee within 15 days of the receipt of the notice as contemplated under Clause (b) of the proviso. He further submits that after amendment carried out by Act 55 of 2002 w.e.f. 6th of February, 2003, the Court can take cognizance of the complaint even after the prescribed period if the complainant satisfies the Court that he had sufficient cause for not making complaint within such period. He, thus, submits that the myopic view of the Courts below has resulted in a situation where an unscrupulous offender

has successfully defeated the process of law.

8. In support of his contention he relies upon the order dated 11th of February, 2010 passed by the Madhya Pradesh High Court in the case of **Vishwanath Ghosh vs. Ramesh Chandra Sindhi - CRR No.1569 of 2009.**

9. I have heard Ld. Counsel for the petitioner and have gone through the records of the case.

10. In the considered opinion of this Court following questions arise for consideration in the present case :-

(i) Whether the courts below are right in holding that the complaint was barred by time ?

(ii) In case the complaint was barred by time whether the Courts below erred in dismissing the complaint without exercising jurisdiction under Section 142(1)(b).

11. Before advertng to the contents of the complaint, it will be apposite to read Section 138 and Section 142 of the N.I. Act.

138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to

have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 8 [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) 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, 9 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.

142. Cognizance of offences.— [(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause

(c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies

the Court that he had sufficient cause for not making a complaint within such period;]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.].

4 [(2) The offence under section 138 shall be inquired into and tried only by a court within whose local local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.]”

12. The aforesaid provisions came up for consideration before Three Judges Bench of Apex Court in **MSR Leathers vs. S. Palaniappan and anr., (2013) 1 SCC 177**, wherein it has been held that :-

“18. The expression ‘cause of action’ is more commonly and easily understood in the realm of civil laws. The expression is not defined anywhere in the Code of Civil Procedure to which it generally bears relevance but has been universally understood to mean the bundle of facts which the plaintiff must prove in order to entitle him to succeed in the suit. (*See State of Madras v. C.P. Agencies AIR 1960 SC 1309; Rajasthan High Court Advocates Association v. U.O.I. & Ors. AIR 2001 SC 416 and Mohamed Khaleel Khan v.*

Mahaboob Ali Mia AIR 1949 PC 78).

19. Section 142 of the Negotiable Instruments Act is perhaps the only penal provision in a statute which uses the expression ‘cause of action’ in relation to the commission of an offence or the institution of a complaint for the prosecution of the offender. A careful reading of Sections 138 and 142, as noticed above, makes it abundantly clear that the cause of action to institute a complaint comprises the three different factual prerequisites for the institution of a complaint to which we have already referred in the earlier part of this order. None of these prerequisites is in itself sufficient to constitute a complete cause of action for an offence under Section 138. For instance if a cheque is not presented within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier, no cause of action would accrue to the holder of the cheque even when the remaining two requirements, namely service of a notice and failure of the drawer to make the payment of the cheque amount are established on facts. So also presentation of the cheque within the stipulated period without service of a notice in terms of Section 138 proviso (b) would give no cause of action to the holder to prosecute the drawer just as the failure of the drawer to make the payment demanded on the basis of a notice that does not satisfy the requirements of clause (b) of proviso to Section 138 would not constitute a complete cause of action.

20. The expression ‘cause of action’ appearing in Section 142 (b) of the Act cannot therefore be understood to be limited to any given requirement out of the three requirements that are mandatory for launching a prosecution on the basis of a dishonoured cheque. Having said that, every time a cheque is presented in the manner and within the time stipulated under the proviso to Section 138 followed by a notice within the meaning of clause (b) of proviso to Section 138 and the drawer fails to make the payment of the amount within the stipulated period of fifteen days after the date of

receipt of such notice, a cause of action accrues to the holder of the cheque to institute proceedings for prosecution of the drawer.

21. There is, in our view, nothing either in Section 138 or Section 142 to curtail the said right of the payee, leave alone a forfeiture of the said right for no better reason than the failure of the holder of the cheque to institute prosecution against the drawer when the cause of action to do so had first arisen. Simply because the prosecution for an offence under Section 138 must on the language of Section 142 be instituted within one month from the date of the failure of the drawer to make the payment does not in our view militate against the accrual of multiple causes of action to the holder of the cheque upon failure of the drawer to make the payment of the cheque amount. In the absence of any juristic principle on which such failure to prosecute on the basis of the first default in payment should result in forfeiture, we find it difficult to hold that the payee would lose his right to institute such proceedings on a subsequent default that satisfies all the three requirements of Section 138.”

13. Thus, in order to maintain complaint under the provisions contained in Section 138 of the Act, the following ingredients must be satisfied :-

- (a) Cheque must have been presented to the bank within a period of three months from the date on which it is drawn;
- (b) The cheque must have returned unpaid;
- (c) The payee or the holder in due course of the cheque must make a demand for payment of the cheque amount within 30 days of the receipt of the information from the bank regarding return of the cheque unpaid;
- (d) Such demand must be made by giving a notice in writing ; and

(e) The drawer of such cheque should have failed to make payment of the cheque amount to the payee/the holder in due course of the cheque within 15 days of the receipt of the said notice.

For Court to take cognizance of offence punishable under
Section 138 of the N.I. Act :

- (a) The complaint be made by the payee or the holder in due course of the cheque in writing;
- (b) Such complaint should be made within one month of the date on which the cause of action to file the said complaint arises;
- (c) The cause of action to file complaint arises after the drawer of the cheque fails to make the payment within 15 days despite having received the notice; and
- (d) After amendment made by Act 55 of 2002 w.e.f. 6th of February, 2003, the Court is entitled to take cognizance of the complaint even after prescribed period of one month from the date when the cause of action arose, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within the prescribed period.

14. Coming on to the facts of the present case, the complainant in his complaint filed under Section 138 pleaded that :-

“6. The legal notice to this effect were served upon the accused through the counsel of the complainant through registered post dated 15th May, 2012 and through e-mail on dated 2nd June, 2012.”

15. The Trial Court instead of appreciating the facts of the complaint to ascertain as to whether sufficient cause for not making a

complaint within the prescribed period has been shown by the complainant or not dismissed the complaint holding that the second legal notice cannot be considered and the complaint is barred by time when limitation is counted from the date of the first legal notice. The said reasoning has been upheld by the revisional Court as well.

16. In the considered opinion of this Court though filing of separate application seeking condonation of delay may be desirable but is not mandatory when the complaint itself offers explanation for delay. If from pleadings raised in the complaint itself, the Court could find that there is sufficient cause shown by the complainant explaining the delay, the Trial Court ought to have exercised its jurisdiction to condone such delay. At this stage it will be apt to refer to law laid down by Apex Court in **Birendra Prasad Sah vs. State of Bihar and Anr. (2019) 7 SCC 273** wherein in somewhat similar circumstances, the Supreme Court held that :-

“9. In the present case, the facts narrated above indicate that the appellant issued a legal notice on 31 December 2015. This was within a period of thirty days of the receipt of the memo of dishonour on 4 December 2015. Consequently, the requirement stipulated in proviso (b) to Section 138 was fulfilled. Proviso (c) spells out a requirement that the drawer of the cheque has failed to make payment to the holder in due course or payee within fifteen days of the receipt of the notice. The second respondent does not as a matter of fact, admit that the legal notice dated 31 December 2015 was served on him. The appellant has in the complaint specifically narrated the circumstance that despite repeated requests

to the postal department, no acknowledgment of the notice was furnished. It was in these circumstances that the appellant issued a second notice dated 26 February 2016. Cognizant as we are of the requirement specified in proviso (b) to Section 138, that the notice must be issued within thirty days of the receipt of the memo of dishonour, we have proceeded on the basis that it is the first notice dated 31 December 2015 which constitutes the cause of action for the complaint under Section 138.

10. The complaint was instituted on 11 May 2016. Under Section 142(1), a complaint has to be instituted within one month of the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. The proviso however stipulates that cognizance of the complaint may be taken by the court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period. Both in paragraphs 7 and 8 of the complaint, the appellant indicated adequate and sufficient reasons for not being able to institute the complaint within the stipulated period. These have been adverted to above. The CJM condoned the delay on the cause which was shown by the appellant for the period commencing from 6 April 2018. However, if paragraphs 7 and 8 of the complaint are read together, it is evident that the appellant had indicated sufficient cause for seeking condonation of the delay in the institution of the complaint. The High Court has merely adverted to the presumption that the first notice would be deemed to have been served if it was dispatched in the ordinary course. Even if that presumption applies, we are of the view that sufficient cause was shown by the appellant for condoning the delay in instituting the complaint taking the basis of the complaint as the issuance of the first legal notice dated 31 December 2015.”

(emphasis supplied)

17. In view of the aforesaid binding precedent, this Court has no

hesitation in holding that even if first demand notice dated 15th of May, 2012 is taken to be the trigger point giving rise to cause of action and the complaint is held to be barred by time, the explanation given in the complaint itself constitutes sufficient cause for condoning the delay in instituting the complaint and the Courts below fell in error in dismissing the complaint. The questions framed in Para 9 *ibid* are thus answered accordingly. Trite it is that object underlying Section 138 of the Act is to promote and inculcate faith in the efficacy of banking system and to create an atmosphere of faith and reliance by discouraging people from dishonouring their commitments which are implicit when they pay their dues through cheques. The provision was intended to punish those unscrupulous persons who issued cheques for discharging their liabilities and it must be interpreted to safeguard and prevent harassment of honest drawers. As per settled principle of law while interpreting statutory provision the Court must adopt an approach that effectuates the object of the legislation and not the one which defeats or frustrates the same.

18. Consequently, as a sequel of the discussion held hereinabove, the present petitions are allowed. Orders passed by the Courts below dated 1st of August, 2012 and 28th of September, 2012 impugned in the present petitions are hereby set aside.

19. Parties are directed to appear before the Trial Court concerned on 16th of November, 2022.

20. Keeping in view the fact that the present complaints are pending for last more than 10 years, the Trial Court is directed to decide the same expeditiously preferably within nine months from the date of receipt of certified copy of this order.

21. A copy of this order be kept on the files of other connected cases.

November 09, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No