

122

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17982-2022
Date of decision: 29.04.2022

Manjit Singh ...Petitioner

Versus

Kotak Mahindra Bank Limited ...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gursimran Singh Madaan, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Challenge in the present petition under Section 482 Cr.P.C. is to the complaint dated 12.10.2020 filed on 21.10.2020, titled “Manjit Singh Vs. Kotak Mahindra Bank Limited” filed under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (hereinafter to be referred to as “the Act of 1881”) registered as Criminal Complaint No.9085, pending in the Court of Judicial Magistrate Ist Class, UT, Chandigarh as well as the summoning order dated 21.01.2021 (Annexure P-2) along with all the subsequent and consequential proceedings arising therefrom.

This judgment has been divided into the following sections:-

Sr. No.	Particulars	Para No.	Page No.
1.	Arguments of learned counsel for the petitioner	2 to 4	2 to 4
2.	Findings	5 to 21	4 to 30
2.1	Chronological list of events	7	4 to 8
2.2	Reference to the various orders passed by Hon’ble Supreme Court in Suo Motu WP(C) No.3 of 2020	9 to 13	8 to 19
2.3	Reference to judgments of the Hon’ble Supreme Court wherein, the object of Act of 1881 has been detailed	14 & 15	19 to 24
2.4	Summary of factors which weighed with this Court for dismissing the petition	19	26 to 30

CRM-M-17982-2022

2. Learned counsel for the petitioner has submitted that in the present case, cheque for an amount of Rs.1,53,02,122/- dated 16.09.2020 was returned on 17.09.2020, with the remarks “Funds Insufficient/Dormant Account” and legal notice was issued on 29.09.2020 and the complaint was instituted on 21.10.2020 and the summoning order was passed on 21.01.2021. It is contended that the petitioner is seeking to challenge the complaint and summoning order solely on the ground that as per the Order dated 08.03.2021, passed by the Hon’ble Supreme Court in Suo Motu WP (C) No.3 of 2020 (Annexure P-4), the period from 15.03.2020 till 14.03.2021, was to be excluded in computing the period under proviso (b) and (c) of Section 138 of the Act of 1881 and any other law, which prescribed period(s) of limitation for instituting the proceedings. It is further contended that in the said order dated 08.03.2021, reference has been made to the order dated 23.03.2020 which was the first order passed by the Hon’ble Supreme Court of India in Suo Motu WP (C) No. 3 of 2020 extending the period of limitation prescribed under the general law or special law, with effect from 15.03.2020 and it has also been noticed in the Order dated 08.3.2021 that the said Order dated 23.03.2020 was extended from time to time.

3. Learned counsel for the petitioner has further submitted that vide order dated 23.09.2021 (Annexure P-5), the period from 15.03.2020 till 02.10.2021, was ordered to be excluded while computing the period of limitation for any suit/appeal/application/proceeding which also included proceedings under Section 138 of the Act of 1881. He has also placed reliance upon order dated 10.01.2022 (Annexure P-6), vide which, the

CRM-M-17982-2022

above-said period, which was up to 02.10.2021, was extended till 28.02.2022. It is further contended that since period from 15.03.2020 till 28.02.2022, stood excluded in computing the period prescribed for instituting the proceedings under Section 138 of the Act of 1881 and in the orders of the Hon'ble Supreme Court, reference had been made to proviso (b) and (c) of Section 138 of the Act of 1881, thus, the complaint which was filed on 21.01.2021 i.e., within that excluded period, is premature and cognizance which has been taken during the said period is also illegal and against the said orders passed by the Hon'ble Supreme Court and thus, deserves to be set aside.

4. Learned counsel for the petitioner has relied upon judgment passed by the Hon'ble Supreme Court in **Yogendra Pratap Singh Vs. Savitri Pandey and another** reported as **2014(10) SCC 713**, to contend that in a case where a premature complaint had been filed, the Hon'ble Supreme Court had upheld the order of the High Court quashing the complaint and the summoning order. It is submitted that in the said case, two issues had been framed. First issue was whether cognizance could be taken under Section 138 of the Act of 1881 on a complaint which has been filed before the expiry of period of 15 days stipulated in the notice required to be served upon the drawer of the cheque and the second issue was that in case, answer to question/issue No.1 was in the negative, then whether the complainant could be permitted to present the complaint again, notwithstanding that period of one month stipulated under Section 142(b) of the Act of 1881 for filing of such complaint has expired. Learned counsel for the petitioner has submitted

CRM-M-17982-2022

that the first question was answered in the negative and the said finding would support the plea raised by him in the present case.

5. This Court has heard the learned counsel for the petitioner and has perused the paper book.

6. The order passed by the Hon'ble Supreme Court in *Suo Motu WP(C)* No. 3/ 2020, on 23.03.2020 and the subsequent orders passed prior to 08.03.2021, have not been annexed with the present petition and on a query put by this Court, learned counsel for the petitioner has supplied copies of the orders dated 23.03.2020, 06.05.2020, 08.06.2020, 06.07.2020, 10.07.2020, 03.03.2021, 04.03.2021, which are collectively taken on record as Mark "A". Learned Counsel for the petitioner has stated that the said orders are all the Orders passed in *Suo Motu WP (C)* No.3 of 2020 prior to the order dated 08.03.2021. It is submitted that the Order dated 08.03.2021 and the orders passed subsequent thereto, have already been annexed with the present petition.

7. The chronological list of events leading to the filing of the present petition under Section 482 have been enumerated hereibelow:-

- i) **23.03.2020**:- Order passed by the Hon'ble Supreme Court of India in *Suo Motu WP(C)* no.3 of 2020 (reproduced hereinafter) directing that the period of limitation for filing petitions/applications/suits etc. shall stand extended with effect from 15.03.2020.
- ii) **06.05.2020**:- Further Order passed by the Hon'ble Supreme Court on an application seeking appropriate direction qua initiation of proceedings under Section 138 of the Act of 1881,

vide which benefit of exclusion of limitation was granted with respect to the proceedings to be initiated under the Negotiable Instruments Act.(The said order is reproduced hereinafter.)

iii) **10.07.2020**:- Order passed by the Hon'ble Supreme Court in the abovesaid proceedings in which, one of the pleas was for extending the period of validity of the cheque which was rejected.(Order reproduced hereinafter)

- The above-said orders were passed only for the benefit of the litigants who had to institute a suit or a complaint etc. and were unable to institute the same on account of the COVID-19 pandemic.
- No benefit was given in the abovesaid orders to an accused person who was guilty of an offence under Section 138 of the Act of 1881.
- No bar was imposed upon institution of any proceedings including proceedings under Section 138.

iv) **16.09.2020**:-Cheque No.13 dated 16.09.2020 issued by the petitioner in favour of Kotak Mahindra Bank for an amount of Rs.1,53,02,122/- in order to discharge a loan with respect to Account bearing No.565044011487 (re: paragraphs 2 and 4 of the complaint filed under Section 138 of the Act of 1881 which are at pages 11 and 12 of the paper book, respectively).

v) **17.09.2020**:-Vide Cheque Return Memo dated 17.09.2020, the cheque in question was dishonoured with the remarks "Funds Insufficient/Dormant Account" (re: para 5 of the complaint

filed under Section 138 of the Act of 1881 which is at page 12 of the paper book)

- vi) **29.09.2020**:-Legal notice dated 29.09.2020 issued to the accused/petitioner (re: para 6 of the complaint filed under Section 138 of the Act of 1881 which is at page 12 of the paper book).
- vii) The petitioner failed to make the payment of the cheque (re: para 6 of the complaint filed under Section 138 of the Act of 1881 which is at page 12 of the paper book)
- viii) **21.10.2020 (P-1 Pg 10)**:- Complaint under Section 138 of the Act of 1881 filed (re: page 13 of the paper book).
- ix) **21.01.2021(P-2 Pg 22)**:Summoning Order passed by the JMIC, Chandigarh summoning the petitioner under Section 138 of the Act of 1881, for 01.04.2021 (re: page 22 of the paper book)
- x) The petitioner did not appear and thus, warrants including non-bailable warrants issued (re: order dated 05.04.2022 P-3 Pg 23)
- xi) **08.03.2021 (P-4 Pg 24)**:- Order passed by the Hon'ble Supreme Court on which reliance has been placed upon by the learned counsel for the petitioner. The said order has been passed after the summoning order dated 21.01.2021 passed in the present case. In the said order, the term "instituting proceedings" has been mentioned and the said term as well as a reading of the order as a whole, would clearly show that the same has been passed in order to give benefit to the persons who have to institute a case/complaint, by extending the period of limitation

for filing of the said case. Even in the said order there is no embargo to file a complaint under Section 138 of the Act of 1881.

- xii) 16.04.2021:-The Hon'ble Supreme Court of India had in another Suo Motu proceedings i.e., Suo Motu Writ Petition (Crl) No. 2 of 2020 considered the expeditious trial of cases under Section 138 of the Act of 1881 and a5-Judges Bench, while passing the Order dated 16.04.2021, disposing of the said matter, had considered the delay in the disposal of the cases under Section 138 and had passed several directions (Order reproduced hereinafter).
- xiii) 23.09.2021 (P-5 Pg 27)/ 10.01.2022 (P-6 Pg 33):-Further orders passed by the Hon'ble SC in SMW (c) no. 3 of 2020.
- xiv) 22.04.2022:- present petition for quashing of complaint and summoning order drafted and subsequently filed after a delay of 1 year and 3 months from the passing of the summoning order, without the petitioner first appearing before the trial Court for joining the proceedings under Section 138 of the Act of 1881.

A perusal of the abovesaid dates would show that the cheque in question was issued after the passing of the Order dated 22.03.2020 by the Hon'ble Supreme Court and the complaint under Section 138 had been filed in accordance with the procedure as prescribed under the Act of 1881 and all the necessary ingredients so as to constitute an offence under Section 138 of the Act of 1881, were *prima facie* made out and after considering the same,

CRM-M-17982-2022

the summoning order was passed. The said aspects have not been challenged by the learned counsel for the petitioner before this Court.

8. The moot point for consideration before this court in the present case is whether the above-said orders passed by the Hon'ble Supreme Court are for the benefit of the complainant i.e., for the purpose of granting the complainant more time to institute the proceedings which, on account of COVID-19 pandemic, he was unable to institute or did not wish to institute in view of the spread of the virus or whether the said orders have been issued in order to protect the accused person from being prosecuted for the said period and thus, in effect, suspend the remedy available to the complainant and estop him from instituting the complaint under Section 138 of the Act of 1881 during the said period. The further point for consideration is as to whether in view of the facts and circumstances of the present case, the complaint under section 138 and the summoning order dated 21.01.2021 deserves to be quashed/set aside or not.

9. In order to answer the above-said points, it would be relevant to take note of all the orders passed by the Hon'ble Supreme Court in SMW (c) no. 3 of 2020 starting from 23.03.2020. On 23.03.2020, the Hon'ble Supreme Court had passed the following order:-

*“This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by **litigants** across the country in filing **their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).**”*

*To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a **period of limitation** in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not **shall stand extended** w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.*

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”

A perusal of the abovesaid order would show that the Hon'ble Supreme Court had considered the fact that country was facing a challenge on account of COVID-19 virus and as a result of which, **“litigants across the country were facing difficulty in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State)** thus, in order to obviate such difficulties and also to ensure that lawyers/litigants do not have to go physically to file such proceedings in respective Courts/Tribunals across the country, the period of limitation in all such proceedings, whether condonable or not, was stated to have been extended w.e.f. 15.03.2020 till the passing of further orders. A reading of the

CRM-M-17982-2022

said order would show that it was for the benefit of the litigants who had to institute cases/complaints. By virtue of the abovesaid order, the said litigants were given an option to postpone the institution of the cases/complaints during the period of the pandemic and in case, they chose to do so, the period mentioned in the order passed by the Hon'ble Supreme Court would stand excluded for the purpose of computing limitation for the institution of said suit/complaint. The said order of the Hon'ble Supreme Court did not bar the filing of any case much less, a complaint under Section 138 of the Act of 1881. There is nothing in the said order to indicate that any benefit was sought to be given to a person who is accused of an offence under Section 138 of the Act of 1881.

10. On 06.05.2020, the Hon'ble Supreme Court was pleased to pass the following order, relevant portion of which has been reproduced hereasunder:-

“IA No.48411/2020 – FOR DIRECTIONS

By way of filing this application for directions, the applicant has made the following prayer :

*“To issue appropriate directions qua (i) arbitration proceedings in relation to section 29A of the Arbitration and Conciliation Act, 1996 and (ii) **initiation of proceedings** under section 138 of the Negotiable Instruments Act, 1881;”*

*In view of this Court's earlier order dated 23.03.2020 passed in Suo Motu Writ Petition (Civil) No.3/2020 and taking into consideration the effect of the Corona Virus (COVID 19) and resultant difficulties being faced by the lawyers and litigants and with a view to obviate such difficulties **and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunal across the***

country including this Court, it is hereby ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings.

In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.

In view of the above, the instant interlocutory application is disposed of.

IA No.48375/2020 – CLARIFICATION/DIRECTION AND IA No.48511/2020 – CLARIFICATION/DIRECTION AND IA No.48461/2020 – CLARIFICATION/DIRECTION AND IA No.48374/2020 - INTERVENTION APPLICATION AND IA No.48416/2020 - INTERVENTION APPLICATION AND IA No.48408/2020 - INTERVENTION APPLICATION

Issue notice.

Waive service on behalf of the respondent – Union of India since Mr. K. K. Venugopal, learned Attorney General for India and Mr. Tushar Mehta, learned Solicitor General, appear on its behalf.

Let notice be issued to other respondents.

(CHARANJEET KAUR) AR-CUM-PS

(SANJAY KUMAR-II AR-CUM-PS

(INDU KUMARI POKHRIYAL) ASSISTANT REGISTRAR”

A perusal of the above order would show that on an application made to issue appropriate directions qua “Initiation of proceedings under Section 138”, the Hon’ble Supreme Court of India was pleased to direct that all period(s) of limitation prescribed under Section 138 of the Act of 1881, shall

CRM-M-17982-2022

be extended w.e.f. 15.03.2020 and in case, the limitation had expired after 15.03.2020, then, the period from 15.03.2020 till the date on which the lockdown was to be lifted in the concerned area was to be excluded and the person who had to institute the suit would get fifteen days after the lifting of the lockdown. It is apparent that the said order was also for the benefit of the complainant who had to institute the complaint and not for the benefit of the accused and even in the said order, there was no embargo from instituting the complaint much less, a complaint under Section 138 of the Act of 1881.

11. The other orders supplied by the learned counsel for the petitioner would show that on 08.06.2020, the matter was adjourned to 06.07.2020 and on 06.07.2020, the Attorney General appearing on behalf of Reserve Bank of India sought permission to file a short note and the matter was adjourned to 10.07.2020. On 10.07.2020, a detailed order was passed by the Hon'ble Supreme Court, the relevant portion of which is reproduced hereasunder:-

“UPON hearing the counsel the Court made the following

O R D E R

Parties have prayed to this Court for extending the time where limitation is to expire during the period when there is a lockdown in view of COVID-19 or the time to perform a particular act is to expire during the lockdown.

I.A. No. 49221/2020 -Section 29A of the Arbitration and Conciliation Act, 1996

Taken on Board.

In Suo Moto Writ Petition (C) No. 3/2020, by our order dated 23.03.2020 and 06.05.2020, we ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 shall be extended w.e.f. 15.03.2020 till further orders.

Learned Attorney General has sought a minor modification in the aforesaid orders.

Section 29A of the Arbitration and Conciliation Act, 1996 does not prescribe a period of limitation but fixes a time to do certain acts, i.e. making an arbitral award within a prescribed time. We, accordingly, direct that the aforesaid orders shall also apply for extension of time limit for passing arbitral award under Section 29A of the said Act. Similarly, Section 23(4) of the Arbitration and Conciliation Act, 1996 provides for a time period of 6 months for the completion of the statement of claim and defence. We, accordingly, direct that the aforesaid orders shall also apply for extension of the time limit prescribed under Section 23(4) of the said Act.

The application is disposed of accordingly.

Pre-Institution Mediation and Settlement under Section 12A of the Commercial Courts Act, 2015.

Under Section 12A of the Commercial Courts Act, 2015, time is prescribed for completing the process of compulsory pre-litigation, mediation and settlement. The said time is also liable to be extended. We, accordingly, direct that the said time shall stand extended from the time when the lockdown is lifted plus 45 days thereafter. That is to say that if the above period, i.e. the period of lockdown plus 45 days has expired, no further period shall be liable to be excluded.

I.A. No. 48461/2020- Service of all notices, summons and exchange of pleadings

Service of notices, summons and exchange of pleadings/documents, is a requirement of virtually every legal proceeding. Service of notices, summons and pleadings etc. have not been possible during the period of lockdown because this involves visits to post offices, courier companies or physical delivery of notices, summons and pleadings. We, therefore, consider it appropriate to direct that such services of all the above may be effected by e-mail, FAX, commonly

used instant messaging services, such as WhatsApp, Telegram, Signal etc. However, if a party intends to effect service by means of said instant messaging services, we direct that in addition thereto, the party must also effect service of the same document/documents by e-mail, simultaneously on the same date.

Extension of validity of Negotiable Instruments Act, 1881-I.A. Nos. 48461 and 48672/2020 (IA. No. 48671/2020, 48673/2020)

I.A. No. 48671/2020 for impleadment is allowed.

With reference to the prayer, that the period of validity of a cheque be extended, we find that the said period has not been prescribed by any Statute but it is a period prescribed by the Reserve Bank of India under Section 35-A of the Banking Regulation Act, 1949. We do not consider it appropriate to interfere with the period prescribed by the Reserve Bank of India, particularly, since the entire banking system functions on the basis of the period so prescribed.

The Reserve Bank of India may in its discretion, alter such period as it thinks fit. Ordered accordingly.

The instant applications are disposed of accordingly.

I.A. Nos. 48374/2020 and 48375/2020

List after six weeks.

***[CHARANJEET KAUR] [INDU KUMARI POKHRIYAL]
ASSTT.REGISTRAR-CUM-PS ASSTT. REGISTRAR”***

A perusal of the above order would show that with respect to the Act of 1881, prayer was made that validity of the cheque be extended but however, the Hon'ble Supreme Court observed that the said period has not been prescribed by any statute but it is a period prescribed by the Reserve Bank of India under Section 35-A of the Banking Regulation Act, 1949 and

CRM-M-17982-2022

thus, the Hon'ble Supreme Court did not consider it appropriate to interfere with the period prescribed by the Reserve Bank of India. It was, however, left to the Reserve Bank of India in its discretion to alter such period. There is nothing on record to suggest that any such period was altered by the Reserve Bank of India nor any such argument has been raised before this Court. Thus, a person who had a cheque in his favour, the validity of which is for a limited period, was required to present the same within the aforesaid period, as, in case, he did not present it to the concerned bank within the said period, then, there could be a possibility of his cheque becoming invalid. Thus, no fault could be found with the complainant in the present case who had chosen to present the cheque within its validity period and after the dishonour of the cheque on account of "funds insufficient/dormant account" vide return memo date 17.09.2020, issued a legal notice dated 29.09.2020 and after the petitioner had failed to make the payment of the cheque amount within a period of fifteen days from the receipt of the legal notice, instituted the complaint under section 138, on 21.10.2020. The complainant was vigilant about its rights and cannot be put to a disadvantage for its promptness. Even the order dated 21.01.2021 passed by Judicial Magistrate 1st Class, Chandigarh, summoning the petitioner, after considering that the offence under Section 138 was *prima facie* made out, cannot be stated to be illegal solely on account of the fact that the said order was passed during the period of the pandemic. Moreover, the complaint in the present case had been filed on 21.10.2020 and the orders of the Hon'ble Supreme Court, which were in force at the time of filing of the complaint made no reference to proviso (c) under Section 138 of the Act of 1881.

CRM-M-17982-2022

12. The aforesaid orders passed by the Hon'ble Supreme Court, are, in the understanding of this Court only for the benefit of the complainant, so as to give an option to the complainant to institute his suit/complaint, after the period of the pandemic had elapsed and in case, the said suit/complaint is filed after the pandemic, then the period during which the pandemic was continuing, would stand excluded for the purpose of computing the period of limitation.

13. The Hon'ble Supreme Court of India had Suo Motu taken cognizance of a matter regarding the "Expeditious Trial of cases under section 138 of the Act of 1881". The same was numbered as Suo Motu Writ Petition (Crl) No. 2 of 2020. In the said matter, the primary concern of the Hon'ble Supreme Court was that there were a large number of cases filed under Section 138 which were pending at various levels and it was decided to examine the delay in the disposal of the said cases and accordingly, a 5-Judges bench had, after considering the submissions made by the amici curiae, passed several directions. The relevant portion of the said judgment is reproduced hereinbelow:

*“IN THE SUPREME COURT OF INDIA CRIMINAL ORIGINAL
JURISDICTION*

SUO MOTU WRIT PETITION (CRL.) NO.2 OF 2020

*In Re: EXPEDITIOUS TRIAL OF CASES UNDER SECTION 138
OF N.I. ACT 1881.*

O R D E R

1. Special Leave Petition (Criminal) No. 5464 of 2016 pertains to dishonour of two cheques on 27.01.2005 for an amount of Rs.1,70,000/-. The dispute has remained pending for the past 16 years. Concerned with the large number of cases filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter

'the Act') pending at various levels, a Division Bench of this Court consisting of two of us (the Chief Justice of India and L. Nageswara Rao, J.) decided to examine the reasons for the delay in disposal of these cases. The Registry was directed to register a Suo Motu Writ Petition (Criminal) captioned as "Expeditious Trial of Cases under Section 138 of N.I. Act 1881". Mr. Sidharth Luthra, learned Senior Counsel was appointed as Amicus Curiae and Mr. K. Parameshwar, learned Counsel was requested to assist him. Notices were issued to the Union of India, Registrar Generals of the High Courts, Director Generals of Police of the States and Union Territories, Member Secretary of the National Legal Services Authority, Reserve Bank of India and Indian Banks' Association, Mumbai as the representative of banking institutions.

Xxx xxx

xxx xxx

24. The upshot of the above discussion leads us to the following conclusions:

1) The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.

2) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.

3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

4) We recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a

period of 12 months, notwithstanding the restriction in Section 219 of the Code.

5) The High Courts are requested to issue practice directions to the Trial Courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.

6) Judgments of this Court in Adalat Prasad (supra) and Subramaniam Sethuraman (supra) have interpreted the law correctly and we reiterate that there is no inherent power of Trial Courts to review or recall the issue of summons. This does not affect the power of the Trial Court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.

7) Section 258 of the Code is not applicable to complaints under Section 138 of the Act and findings to the contrary in Meters and Instruments (supra) do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by an order of this Court dated 10.03.2021.

8) All other points, which have been raised by the Amici Curiae in their preliminary report and written submissions and not considered herein, shall be the subject matter of deliberation by the aforementioned Committee. Any other issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee.

25. List the matter after eight weeks. Further hearing in this matter will be before 3-Judges Bench.

26. *We place on record our appreciation for the valuable assistance rendered by Mr. Sidharth Luthra, learned Senior Counsel and Mr. K. Parameshwar, learned Counsel, as Amici Curiae.*

.....CJI.

[S. A. BOBDE]

.....J.

[L. NAGESWARA RAO]

.....J.

[B. R. GAVAI]

.....J.

[A. S. BOPANNA]

.....J. [S. RAVINDRA BHAT]”

The present petitioner apparently only wants to delay the final adjudication of the proceedings under Section 138 of the Act of 1881, as neither the petitioner has raised any ground to the effect that the cheque in question was not issued by the petitioner nor is the petitioner ready to honour the cheque even now and even in case, the sole argument raised by the learned counsel for the petitioner is accepted then also, at best, the present proceedings would be set aside and the complainant would be given the liberty to file a fresh complaint and it is not that the petitioner would be absolved of his liability under Section 138 of the Act of 1881. Moreover, the present petition has been filed after a delay of 1 year and 3 months from the date of the summoning order after non-bailable warrants were issued against the petitioner.

14. The Hon’ble Supreme Court in the case titled as “**Sicagen India Limited vs. Mahindra Vadineni and Ors**” reported as **2019 (4) SCC 271**, has held as under:

“6. Three-Judge Bench of this Court in [MSR Leathers vs. S. Palaniappan](#) held that there is nothing in the provisions of [Section 138](#) of the Act that forbids the holder of the Cheque to make successive presentation of the cheque and institute the criminal complaint based on the second or successive dishonour of the cheque on its presentation. In paragraphs 29 and 33 this Court held as under:

“29 It is trite that the object underlying Section 138 of the Act is to promote and inculcate faith in the efficacy of banking system and its operations giving creditability to negotiable instruments in business transactions 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 without really intending to honour the promise that goes with the drawing up of such a negotiable instrument. It was intended to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case the cheque was dishonoured and to safeguard and prevent harassment of honest drawers. (See [Mosaraf Hossain Khan V. Bhagheeratha Engg. Ltd. C. C. Alavi Haji v. Palapetty Muhammed](#) and [Damodar S. Prabhu v. Sayed Babalal H..](#) Having said that, we must add that one of the salutary principles of interpretation of statutes is to adopt an interpretation which promotes and advances the object sought to be achieved by the legislation, in preference to an interpretation which defeats such object. This Court has in a long line of decisions recognized purposive interpretation as a sound principle for the courts to adopt while interpreting statutory provisions. We may only refer to the decision of this Court in [New India Sugar Mills Ltd. v. CST](#) wherein this Court observed:

“8. ... It is a recognized rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the legislature. If an expression is susceptible of narrow or technical meaning, as well as a popular meaning the court would be justified in assuming that the legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its power invalid”

33. 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 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.”

A perusal of the above judgment would show that earlier judgments of the Hon'ble Supreme Court in which, it had been observed that the object underlying section 138 is to promote and inculcate efficacy of banking system and its operations, giving credibility to negotiable instruments in

CRM-M-17982-2022

business transactions 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 cheque, were taken note of. It was further noticed that the entire purpose is to punish the unscrupulous persons who issued cheques for discharging their liability without intending to honour their promise. Even the salutary principle of interpretation to the effect that an interpretation which promotes and advances the objects sought to be achieved by the legislation in preference to an interpretation that defeats such object should be adopted, was noticed.

15. The Hon'ble Supreme Court in C.C. Alavi Haji Vs. Palapetty Muhammed and another, reported as 2007(6) SCC 555, has held as under :

“4. Chapter XVII of the Act originally containing [Sections 138 to 142](#) was inserted in the Act by the Banking, Public Financial Institutions and [Negotiable Instruments Laws \(Amendment\) Act, 1988](#) with the object of promoting and inculcating faith in the efficacy of banking system and its operations and giving credibility to negotiable instruments in business transaction. The introduction of the said Chapter was intended to create an atmosphere of faith and reliance on banking system by discouraging people from not honouring their commitments by way of payment through cheques. [Section 138](#) of the Act was enacted to punish those unscrupulous persons who purported to discharge their liability by issuing cheques without really intending to do so. To make the provisions contained in the said Chapter more effective, some more Sections were inserted in the Chapter and some amendments in the existing provisions were made. Though, in this reference, we are not directly concerned with these amendments but they do indicate the anxiety of the Legislature to make the provisions more result

oriented. Therefore, while construing the provision, the object of the legislation has to be borne in mind.

Xxx xxx

6. As noted hereinbefore, [Section 138](#) of the Act was enacted to punish unscrupulous drawers of cheques who, though purport to discharge their liability by issuing cheque, have no intention of really doing so. Apart from civil liability, criminal liability is sought to be imposed by the said provision on such unscrupulous drawers of cheques.

Xxx xxx

Xxx xxx

17. It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under [Section 138](#) of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under [Section 138](#) of the Act, cannot obviously contend that there was no proper service of notice as required under [Section 138](#), by ignoring statutory presumption to the contrary under Section 27 of the G.C. Act and [Section 114](#) of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskarans case (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of noticea trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of [Section 138](#) of the Act.

Xxx xxx”

This Court has specifically put it to the learned counsel for the petitioner as to whether the petitioner was ready to honour the cheque now, as substantial period even after 28.02.2022 has elapsed, the learned counsel for the petitioner had answered in the negative.

16. With respect to the orders passed by the Hon'ble Supreme Court on 08.03.2021 (Annexure P-4), 23.09.2021 (Annexure P-5) and 10.01.2022 (Annexure P-6), the following factors would show that the said orders would not advance the case of the petitioner in any manner:-

- i) The said orders have been passed subsequent to the date, on which, the offence stood committed, the complaint dated 21.10.2020 filed and even the summoning order dated 21.01.2021 was passed.
- ii) Even the Order dated 08.03.2021 as well as the other orders, clearly indicate that same have been passed by the Hon'ble Supreme Court of India only to remove difficulties faced by the litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State). The same in the understanding of this Court cannot be considered to give any benefit to the accused moreso, when there is no specific direction/observation regarding the same. Even with respect to para 3, where reference has been made to Section 138 proviso (b) and (c), it would be clear that the same also provides for exclusion of the period from 15.03.2020 till

14.03.2021 for the purpose of **instituting** proceedings including the proceedings under section 138 of the Act of 1881 and other laws. The usage of the word “instituting” proceedings in paragraph 3, makes it clear that the same is only for the above purpose and cannot, in the understanding of this Court, be construed to mean that the same would enlarge the time granted to the accused person to make the payment of the cheque amount.

- iv) The orders passed by the Hon’ble Supreme Court do not restrain the complainant or any person from instituting the proceedings during the period of the pandemic.

17. With respect to the judgment of the Hon'ble Supreme Court in ***Yogendra Pratap Singh's case (Supra)***, which has been relied upon by the learned counsel for the petitioner, it would be relevant to note that the said case was a case in which, the complaint under Section 138 had been filed prior to the expiry of 15 days from the service of legal notice and was thus, held to be premature. In the present case, complaint dated 21.10.2020 has been filed after the expiry of 15 days from the date of service of the notice and the said fact has not been challenged or disputed during the course of arguments before this Court and thus, the present complaint cannot be stated to be premature. Moreover, even after taking into consideration the orders passed by the Hon’ble Supreme Court of India in Suo Motu WP(C) No.3 of 2020, this Court is of the opinion that the complaint filed on 21.10.2020 cannot held to be premature and thus, the said judgment would not, in any way, further the case of the petitioner. Furthermore, in the abovesaid case,

the Hon'ble Supreme Court, even after observing that the complaint filed was premature, had granted liberty to the complainant to file a fresh complaint within one month from the date of the decision in the criminal case and thus, the accused was not absolved of the offence under Section 138 of the Act of 1881.

Keeping in view the abovesaid facts and circumstances and also the law laid down by the Hon'ble Supreme Court, this Court is of the view that the argument raised by the learned counsel for the petitioner to the effect that the complaint as instituted on 21.10.2020 was premature, is meritless and deserves to be rejected. Thus, the point as to whether the orders of the Hon'ble Supreme Court passed in Suo Motu WP(C) No.3 of 2020 are for the benefit of the complainant or for the benefit of the accused person is answered in favour of the complainant and against the petitioner/accused person.

18. After considering the entire matter, this Court is of the opinion that in case, this Court was to entertain the present petition, it would be doing injustice to the complainant, who has been vigilant of its rights and had instituted the complaint under Section 138 with respect to the dishonour of the cheque, in accordance with the provisions of the Act of 1881 and for whose benefit the abovesaid orders had been passed by the Hon'ble Supreme Court of India. Thus, keeping in view the facts and circumstances of the case, the present petition deserves to be dismissed and the Complaint and the Summoning Order dated 21.01.2021, deserve to be upheld.

19. Summarily put, the following factors have weighed with this Court in dismissing the present petition:

- i) A perusal of the complaint would show that the ingredients of Section 138 of the Act of 1881 are, *prima facie*, made out. No argument has been raised challenging the said aspect.
- ii) The Summoning order was passed on 21.01.2021 and warrants including non-bailable warrants were issued as the petitioner did not join the proceedings and after a delay of 1 year and 3 months from the date of passing of the summoning order, the petitioner has chosen to file the present petition without appearing before the trial court.
- iii) None of the orders passed by the Hon'ble Supreme Court from 23.03.2020 till 10.01.2022, put any embargo upon the complainant to institute the complaint under Section 138 of the Act of 1881.
- iv) The said orders of the Hon'ble Supreme Court are for the benefit of the complainant who could not institute the complaint under Section 138 on account of the COVID-19 pandemic and cannot be construed to the disadvantage of the litigants who in spite of the pandemic, were vigilant to institute their complaints in accordance with the provisions of the Act of 1881.
- v) A perusal of the order of the Hon'ble Supreme Court dated 10.07.2020, would show that the argument raised therein, with respect to granting extension qua the period of validity of the cheque, had been rejected, thus, necessarily requiring the holder of a cheque to present the cheque during the period of its validity, which could be elapsing during the pandemic.

- vi) In the present case, the cheque in question has been issued on 16.09.2020 during the period of the pandemic and thus, it would not lie in the mouth of the petitioner to contend that the said cheque could not be honoured during the pandemic.
- vii) In the orders of the Hon'ble Supreme Court of India, passed from 22.03.2020 till the time the Complaint under Section 138 was filed i.e., 21.10.2020, there is no reference to proviso (c) to Section 138 of the Act of 1881.
- viii) Reliance sought to be placed upon the Order dated 08.03.2021 passed by the Hon'ble Supreme Court and the subsequent orders, would not further the case of the Petitioner inasmuch as, apart from the said orders having been passed after the passing of the summoning order dated 20.01.2021, a reading of the order dated 08.03.2021 as a whole and also keeping in view, the terms used in the said order i.e., "instituting proceedings" would show that the benefit has been given to the complainant etc. by extending the period of limitation for instituting/filing cases/complaints and the same is not for the benefit of the accused.
- ix) Accepting the argument raised by the learned counsel for the petitioner, would be defeating the object of the Negotiable Instruments Act, 1881, which is to promote and inculcate faith in the efficacy of the banking system and is to discourage people from dishonouring their commitments, which are implicit when they pay their dues through a cheque, as has been

observed by the Hon'ble Supreme Court in *Sicagen India Limited (supra)* and *C.C. Alavi Haji (supra)*.

- x) The Hon'ble Supreme Court of India had in another Suo Motu proceedings i.e., Suo Motu Writ Petition (Crl) No. 2 of 2020 considered the expeditious trial of cases under Section 138 of the Act of 1881 and a 5-Judges Bench, while passing the Order dated 16.04.2021, disposing of the said matter, had considered the delay in the disposal of the cases under Section 138 and had passed several directions (Order reproduced hereinabove). The present petitioner apparently only wants to delay the final adjudication of the proceedings under Section 138 of the Act of 1881 as even in case, the sole argument raised by the learned counsel for the petitioner is accepted then also, at best, the present proceedings would be set aside and the complainant would be given the liberty to file a fresh complaint and it is not that the petitioner would be absolved of his liability under Section 138 of the Act of 1881. (re:*YogendraPartap Singh (supra)* relied upon by the learned counsel for the petitioner). Moreover, the present petition has been filed after a delay of 1 year and 3 months from the date of the summoning order after non-bailable warrants were issued against the petitioner.
- xi) Even after 28.02.2022, a period of more than two months has elapsed and on a pointed query by this Court as to whether the petitioner was now ready to honour the cheque dated

CRM-M-17982-2022

16.09.2020, the learned counsel for the petitioner has answered in the negative.

- xii) The Order of Summoning dated 21.01.2021 passed by the JMIC, Chandigarh, as per this Court, does not deserve to be set aside solely on the ground that cognizance has been taken by the Judicial Magistrate 1st class, Chandigarh during difficult times.

20. Accordingly, the present petition is dismissed.

21. The observations made in the present case are only for the purpose of adjudicating the present petition under Section 482 of Cr.P.C., in which, challenge is to the complaint filed under Section 138 of the Act of 1881 and the summoning order and in order to answer the argument raised by the learned counsel for the petitioner and should not be construed as final expression on the merits of the case which would be adjudicated by the trial Court after taking into consideration the evidence led by all the parties before the trial Court.

29.04.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-Yes/No

Whether reportable:- Yes/No