

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

CRM-M-14104-2018

Reserved on :-09.05.2023

Pronounced on:-11.07.2023

Madan Singla

...Petitioner.

Vs.

Arun Kumar

...Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Keshav Pratap Singh, Advocate for the petitioner.

None for the respondent.

HARKESH MANUJA, J. (Oral)

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of complaint No.NACT/1291/2017 dated 07.12.2017, titled as "**Arun Kumar vs. Madan Singla**" as well as order of learned Additional Chief Judicial Magistrate, Panchkula, passed on even date, whereby the petitioner has been summoned under Section 138 of the Negotiable Instruments Act, 1881 (for short, "1881 Act").

2. Very briefly facts of the case are that on account of dishonour of cheque bearing No.419539 dated 18.07.2017 amounting to Rs.2 lakhs, for the reason "other reason- bank is merged", which was drawn on Bank of Punjab, Chandigarh, a complaint came to be filed against the petitioner at the instance of respondent, invoking Section 138 of the 1881 Act, wherein, the petitioner was summoned vide

order dated 07.12.2017.

3. By way of present petition, the aforesaid complaint as well as summoning order has been impugned on the ground that from the perusal of cheque in question and contents of complaint, no offence under Section 138 of 1881 Act has been made out against the petitioner.

4. Learned counsel for the petitioner submits that the cheque in question is dated 18.07.2017, which was presented for the first time on 11.09.2017 and dishonoured on the same date for the reason "other reason-Bank is merged". The same was again presented on 18.10.2017, but was again returned with remarks "other reason-bank is merged". Thereafter, a demand notice dated 26.10.2017 was issued under registered A.D. post on 30.10.2017 by the respondent, followed by filing of complaint and the summoning order dated 07.12.2017.

5. In the aforesaid facts and circumstances, learned counsel for the petitioner submits that once the cheque in question was dishonoured at the first instance on 11.09.2017 for the reason "other reason-bank is merged", there was no occasion for the respondent-complainant to have presented the same again as there was no probability of its encashment on account of bank having merged way-back in the year 2005. He further submits that though successive presentation of the cheque during its validity period was permissible in law, however, in the wake of the reason mentioned for its dishonor, its successive presentation was not going to fetch its encashment, as

such the same was not permissible in law. He further points out that in the present facts, demand notice served post second dishonor though within 15 days thereafter was wholly barred in law being in violation of the mandatory provision of Section 138 of the 1881 Act.

6. On the other hand, no one has chosen to appear on behalf of the respondent despite service as duly noticed in the previous orders dated 14.01.2019 and 05.02.2021. Nonetheless, learned counsel for the petitioner has pointed out that the complainant has been duly represented by his counsel before the trial Court and the factum of pendency of the present petition has been duly recorded in those proceedings.

7. I have heard learned counsel for the petitioner and gone through the paper book, I am unable to find substance in the submissions made on behalf of the petitioner.

8. As per settled law and proviso (a) of Section 138 of the 1881 Act, successive presentation of cheque is permissible within the period of its validity. The issue whether the prosecution based upon second or successive dishonour of the cheque is permissible or not, is no longer res integra and a three-Judges Bench of Hon'ble Apex Court in **"MSR Leathers vs. S. Palaniappan and Another"** reported as 2013 (1) SCC 177, 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. While holding so, Hon'ble Apex Court

relied upon one of the salutary principles of interpretation of statutes that an interpretation which promotes and advances the object, sought to be achieved by the legislation, shall be adopted in preference to an interpretation which defeats such object. Relevant para of the same is reproduced hereunder:-

“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.”

9. At this stage it is necessiated to have a look at the proviso to Section 138 of the Act, which is reproduced hereunder:-

*“138. Dishonour of cheque for insufficiency, etc., of funds in the account.—****

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, [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.”

Admittedly, successive presentation within the validity period of cheque is permissible. Another proviso (138(b)) requires that demand for payment by notice in writing has to be made within 30 days after information is received about return of cheque as unpaid. Thus once, successive presentation is permissible and cheque can be presented any number of times during its validity period, as a natural corollary of the same, drawee is required to be bound by successive information received about encashment or return, and demand for payment within 30 days from any fresh information can be raised. However, clause (c) makes it mandatory to file complaint in case drawer fails to make payment within 15 days of receipt of notice which means once demand notice is issued, thereafter no presentation is permitted.

10. Learned counsel for the petitioner has placed reliance on ***"D.V. Vanitha vs. S.L. Vezhavendhan" 2022(2) MLJ (Criminal)(286)"*** , and relevant para 18 of the same is reproduced hereunder:-

"18. In the case before hand the cheque was returned for the reason that "account closed" on 03.02.2016 when it was presented for the first time on 02.02.2016. Suppressing this return, cheque was presented again on 28.03.2016 and it was again returned for the same reason "account closed". It is palpably clear that second presentation was made only to bring the case within a period of limitation. There is no logic or reason for representing the cheque again, when the cheque was returned for the reason "account closed". Once account is

closed, there is no question of re-opening the account to facilitate payment in the same account. It is quite obvious that the respondent having failed to issue a statutory notice within stipulated period after the first return, again presented the cheque to save the limitation. This Court finds that this case is barred by limitation and cannot be maintained."

11. However, in my considered opinion, reliance placed on this judgment is misconceived on two counts. Firstly, it is required to be noticed that in paras 4 and 5 of the complaint, the respondent-complainant has mentioned that the cheque was presented again on an assurance given by the petitioner, while this was not the case in **Vanitha's case** (supra) and additionally this scenario is specifically covered by the reasoning given in **MSR's case** (supra). Secondly, in **Vanitha's case** (supra), Division Bench was exercising revisional jurisdiction after trial has completed and thus was having the benefit of observing and examining all the aspects of the case, while in the present case the trial is at very initial stage only and this Court does not have the benefit of examining the evidence and submissions made from both the sides.

12. Granting the relief prayed for on account of this technical ground would also not be in harmony with the object and purpose with which the 1881 Act was brought into existence. Purposive interpretation has been recognized as a sound principle for the Courts to adopt, while interpreting statutory provisions. In the case of "New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar" (AIR 1963 SC 1207), it was observed:

"It is a recognised rule of interpretation of statutes that

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 a 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."

13. Similarly in **"M/s. Laxmi Dyechem v. State of Gujarat"**, reported as 2013 (1) RCR 260 , while interpreting Section 138 of the 1881 Act, Hon'ble Apex Court observed that so long any change is brought about with a view to preventing the cheque being honoured, the dishonour would become an offence under Section 138 subject to other conditions prescribed being satisfied. Relevant para 15 thereof is reproduced hereunder:-

"15. The above line of decisions leaves no room for holding that the two contingencies envisaged under Section 138 of the Act must be interpreted strictly or literally. We find ourselves in respectful agreement with the decision in NEPC Micon Ltd. (supra) that the expression "amount of money is insufficient" appearing in Section 138 of the Act is a genus and dishonour for reasons such "as account closed", "payment stopped", "referred to the drawer" are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the "signatures do not match" or that the "image is not found", which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act. This Court has in the decisions referred to above taken note of situations and contingencies arising out of deliberate acts of omission or commission on the part of the drawers of the cheques which would inevitably result in the dishonour of the cheque issued by them. For instance this Court has held that if after issue of the cheque the drawer closes the account it must be presumed that the amount in the account was nil hence insufficient to meet the demand of the cheque. A similar result can be brought about by the drawer changing his specimen signature given to the bank or in the case of a company by the company

changing the mandate of those authorised to sign the cheques on its behalf. Such changes or alteration in the mandate may be dishonest or fraudulent and that would inevitably result in dishonour of all cheques signed by the previously authorised signatories. There is in our view no qualitative difference between a situation where the dishonour takes place on account of the substitution by a new set of authorised signatories resulting in the dishonour of the cheques already issued and another situation in which the drawer of the cheque changes his own signatures or closes the account or issues instructions to the bank not to make the payment. So long as the change is brought about with a view to preventing the cheque being honoured the dishonour would become an offence under Section 138 subject to other conditions prescribed being satisfied. There may indeed be situations where a mismatch between the signatories on the cheque drawn by the drawer and the specimen available with the bank may result in dishonour of the cheque even when the drawer never intended to invite such a dishonour. We are also conscious of the fact that an authorised signatory may in the ordinary course of business be replaced by a new signatory ending the earlier mandate to the bank. Dishonour on account of such changes that may occur in the course of ordinary business of a company, partnership or an individual may not constitute an offence by itself because such a dishonour in order to qualify for prosecution under Section 138 shall have to be preceded by a statutory notice where the drawer is called upon and has the opportunity to arrange the payment of the amount covered by the cheque. It is only when the drawer despite receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount that the dishonour would be considered a dishonour constituting an offence, hence punishable. Even in such cases, the question whether or not there was a lawfully recoverable debt or liability for discharge whereof the cheque was issued would be a matter that the trial Court will examine having regard to the evidence adduced before it and keeping in view the statutory presumption that unless rebutted the cheque is presumed to have been issued for a valid consideration."

14. In view of the discussion made herein above, when the cheque has been successively presented within its validity period and demand notice in writing has been issued within 30 days of the receipt of information from the bank regarding the return of cheque as unpaid; no ground is made out for any intervention by this Court and

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accordingly, present petition is dismissed.

15. Pending miscellaneous application(s), if any, shall also stand disposed of.

11.07.2023
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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No