IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-14696-2021 (O&M)

Reserved on**:- May 03, 2023**

Date of Pronouncement**:- May 11, 2023**

Nitin Mahajan ...Petitioner

vs.

Vinod Kumar ...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Arun Singla, Advocate for the petitioner.

Mr. DPS Joura, Advocate for the respondent.

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HARKESH MANUJA, J.

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of proceedings arising out of Complaint bearing NACT No.540, dated 21.12.2018, under Section 138 of the Negotiable Instruments Act (NI Act), filed by the Respondent along with summoning order dated 21.02.2019 passed by Ld. JMIC-cum-CJ(JD), Hansi against the petitioner with all subsequent proceedings arising therefrom.

2. Point of contention in the present case is very short and learned counsel for the petitioner submits that proceedings are vitiated from the very beginning on account of the fact that a bare perusal of the original Complaint (Annexure P-4) reveals that the Complainant has himself admitted the cheque in question was issued on 18.05.2018, which was ultimately dishonoured by Banker of the accused on 08.11.2018. He further submits that though the

complainant has very conveniently avoided mentioning the date on which such cheque was presented for encashment, but it was apparent that the cheque had already become invalid upon expiry of three months of its issuance i.e. on 17.08.2018, especially, in view of the RBI Notification No.RBI/2011-12/251 DBOD.AML BC.No.47/14.01.001 /2011-12 dated 04.11.2011. In support of his submission he places reliance upon a decision of the Delhi High Court in the matter of **"Ansh Chugh vs. Pradeep Gupta",** CRL.M.C.2973/2018 & Crl.M.A.No.10513/2018, in which proceedings were quashed specifically in view of the background that non-presentation of the cheque to the drawee bank, within the period specified, absolves the person issuing the same of his criminal liability under Section 138 of the N.I. Act.

5. On the other hand, learned counsel for the respondent submits that the complainant had taken a sum of Rs. 9,07,000/- from the respondent in the name of sending him to Europe and to provide him employment there subject to condition that in case, he could not fulfill his promise then he shall return the amount. Subsequently when he could not send the respondent to Europe, in the name of refund of amount and to discharge the above said existing & legally enforceable outstanding liability, he issued this stale dated cheque in favour of the respondent. He however does not deny the fact that the cheque was dishonored approximately two and half months after the date of its issuance.

6. I have heard learned counsel for the petitioner and gone through the paper book of the case and I find substance in the

arguments raised by the learned Counsel for the petitioner. This is an admitted fact that cheque in question was issued on 18.05.2018, which was ultimately dishonoured by Banker of the accused on 8.11.2018. In view of RBI circular dated 04.11.2011, maximum validity period for a cheque could be for 3 months only and even on the cheque in question it was specified that the same is valid for 3 months only. Now in this context, it would be relevant to peruse Section 138 of The Negotiable Instruments Act, 1881, relevant part of which is reproduced below:

> *"**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 provisions of this Act, be punished with imprisonment for 19 [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—*
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> *(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**; ……"*

7. From a perusal of proviso (a) to Section 138, it is apparent that one of the essential condition to bring into effect the substantive provision i.e. Section 138 of NI Act is that cheque be 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.** In the

present case, cheque in question was issued on 18.05.2018, therefore, as per RBI circular/notification dated 04.11.2011 which is in vouge, the same was valid till 17.08.2019 only and it was ultimately dishonoured on 8.11.2018, clearly showing that it was presented in the bank much beyond its validity. Reliance has rightly be placed on **Ansh Chugh's case (supra),** wherin it was held that the validity of a cheque goes to the root of initiation of proceedings under Negotiable Instruments Act and there is no cause of action if the cheque presented was not valid. Even learned Counsel for the respondent has not been able to produce any judgment to counter the same.

8. In view of the discussion held above, present petition is allowed and Complaint bearing NACT No.540, dated 21.12.2018, with all subsequent proceedings arising therefrom including summoning order dated 21.02.2019 passed by Ld. JMIC-cum-CJ(JD), Hansi, are quashed.

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

May 11,2023 **(HARKESH MANUJA)**
JUDGE

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No