

2023:PHHC:167087



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

201

CRM M-29458 of 2018

Date of Decision: 11.12.2023

Nandita Singh

...Petitioner

Versus

Sunita Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Animesh Sharma, Advocate
for the petitioner.

Mr. Prateek Gupta, Advocate and
Mr. Shrey Goyal, Advocate, for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 of Cr.P.C. with a prayer to quash the order dated 23.02.2017 (Annexure P-1) passed by the Additional Sessions Judge, Gurugram, whereby, the summoning order dated 05.01.2016 (Annexure P-2) passed by the Judicial Magistrate 1st Class, Gurugram in complaint case No. 4706 dated 01.07.2013 (Annexure P-4) titled as “**Nandita Singh Vs. Sunita Singh**” had been set aside.

2. Learned counsel for the petitioner contended that the petitioner/complainant had filed a complaint under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') on 01.07.2013 before the Court of Judicial Magistrate 1st Class, Gurugram on the allegations that two post dated cheques issued by

the respondent were dishonoured. After recording of the preliminary evidence, vide order dated 29.07.2013 (Annexure P-3), the respondent was summoned to face trial. Subsequently, the bailable as well as non bailable warrants were issued against the respondent and finally the respondent appeared and was admitted to bail. The summoning order dated 29.07.2013 (Annexure P-3) was never challenged and had attained finality. In the meantime, the Hon'ble Supreme Court of India passed the judgment in ***Dashrath Roop Singh Rathore Vs. State of Maharashtra, 2014 AIR (SC) 3519*** and it was held that the complaint was to be filed before the competent Court, under whose jurisdiction the drawee bank was situated. Consequently, vide order dated 10.11.2014 (Annexure P-5), the trial Court ordered the returning of original complaint, documents and all Court orders to the complainant against proper receipt and identification. The order dated 10.11.2014 (Annexure P-5) was unsuccessfully challenged by the petitioner in revision before the Court of Sessions Judge, Gurugram. Thereafter, the petitioner moved another application before the trial Court for the return of the original file for the purpose of filing it before the competent Court. The said application was allowed on 23.04.2015 and the original case file alongwith all documents and orders was received by the petitioner on 23.04.2015 itself. Pursuant thereto, on 16.05.2015, the petitioner filed the complaint alongwith records of the case before the Court of Metropolitan Magistrate Girgaon, Mumbai, Maharashtra, alongwith an application for

condonation of delay under Section 142-B of the Act as the complaint had not been filed within 30 days from the date of order dated 10.11.2014.

3. During the pendency of the complaint at Mumbai, Maharashtra, an Ordinance No. 6 of 2015 was notified, rendering the judgment passed by the Hon'ble Supreme Court in the matter of ***Dashrath Roop Singh Rathore (Supra)*** ineffective. In view of the new law, the complaint was to be transferred back to the Court of Judicial Magistrate 1st Class, Gurugram. Accordingly, the trial Court at Girgaon, Mumbai, passed an order dated 13.08.2015 (Annexure P-9) and the complete record of the case was handed over to the petitioner in a sealed cover to be filed before the competent Court at Gurugram. Thereafter, the petitioner moved an application dated 01.09.2015 (Annexure P-10) for refiling the complaint and for proceeding further. After considering the preliminary evidence, on 05.01.2016 again the Judicial Magistrate 1st Class, Gurugram passed a summoning order and the respondent was ordered to be summoned. Against the order dated 05.01.2016 (Annexure P-2), the respondent filed a revision petition before the Sessions Judge, Gurugram and stated that the complaint was not filed within a period of 30 days before the Court at Mumbai and an application was moved for condonation of delay. However, while issuing the summoning order dated 05.01.2016 (Annexure P-2), the trial Court had ignored the application for condonation of delay. Ultimately, vide the impugned

order dated 23.02.2017, the summoning order dated 05.01.2016 was set aside and the Magistrate was directed to pass a fresh order, after deciding the application for condonation of delay.

4. Learned counsel further submitted that the revisional Court as well as the trial Court had committed serious illegality in overlooking the summoning order dated 29.07.2013, passed by the trial Court, whereby, the respondent was summoned to face trial in the complaint in question. Since, the original complaint filed within a period of limitation and a valid summoning order dated 29.07.2013 was passed by the JMIC, Gurugram, there was no need of passing a second summoning order dated 05.01.2016. Learned counsel further submitted that in fact the trial Court could not have recalled its own order of summoning the accused in view of the judgment passed by the Hon'ble Supreme Court in the matter of **Daulat Prasad Vs. Roop Lal Jindal 2004(4) RCR (Criminal) 1**. Thus, the second summoning order was without jurisdiction and even the order passed by the revisional Court was patently erroneous.

5. On the other hand, learned counsel for the respondent submitted that initially complaint was filed before the Court of Judicial Magistrate 1st Class, Gurugram, which had issued summons to the respondent for appearance on 29.07.2013. However, vide order dated 10.11.2014, the complaint alongwith the original file was returned to the petitioner with liberty to file a case, where the jurisdiction was there. The revision filed by the petitioner against the

order dated 10.11.2014 was also dismissed. Ultimately, the petitioner filed a complaint before the trial Court at Girgaon, Mumbai, alongwith an application for condonation of delay in filing the complaint. However, in the meantime, in view of the ordinance issued by the Government, the trial Court at Mumbai, transferred the complaint from Mumbai to the Court of Area Magistrate Gurugram on 13.08.2015. Since, the matter was transferred from Mumbai to Gurugram, the trial Court at Gurugram was under a legal obligation to start the proceedings from the stage, where it was left by the trial Court at Girgaon, Mumbai. Learned counsel further submitted that the order dated 05.01.2016 was never challenged by the present petitioner and had attained the finality. Consequently, the petitioner is estopped from raising a challenge to the order dated 05.01.2016, passed by the trial Court. Still further, the impugned order passed by the Revisional Court is an innocuous order in as much as the Revisional Court had only remanded the case back to the Court of a Magistrate for a decision on the application for condonation of delay as there was a bonafide oversight by the trial Court. Even the revisional Court had not opined on the merits of condonation of delay and the petitioner had wrongly challenged the same before the revisional Court.

6. I have heard learned counsel for the parties and perused the record.

7. In the present case, the main ground of challenge on the part of the present petitioner is that both the Courts at Girgaon

committed serious illegality in overlooking the summoning order dated 29.07.2013 passed by the Judicial Magistrate 1st Class, Gurugram. Even, the original complaint was initially filed well within the period of limitation and pursuant to the ordinance issued by the Government, the proceedings undertaken before the trial Court at Girgaon, Mumbai, were rendered ineffective which were conducted in view of the judgment passed by the Hon'ble Supreme Court in the matter of ***Dashrath Roop Singh Rathore*** (supra). Even the order dated 29.07.2013 had attained finality and, thus, there was no occasion for the trial Court at Gurugram to pass a second summoning order dated 05.01.2016. In fact, on the first blush, the argument raised by learned counsel for the petitioner appears to be attractive but it does not hold ground and is liable to be rejected. No doubt, the complaint was initially filed within a period of limitation at Gurugram and after preliminary evidence, the order dated 29.07.2013 was passed by the trial Court but in view of the law laid down by the Hon'ble Supreme Court in the matter of ***Dashrath Roop Singh Rathore*** (supra), the proceedings were discontinued and the criminal complaint was directed to be returned to the present petitioner/complainant, to be filed before a competent Court at Mumbai. The petitioner filed a fresh complaint before the trial Court at Mumbai, which was accompanied by an application for condonation of delay in filing the complaint at Mumbai. Thereafter, the proceedings had formally commenced from a scratch before the

trial Court at Mumbai and the preliminary evidence was led. At no point of time, the petitioner had challenged the said proceedings and voluntarily led the preliminary evidence before the trial Court at Mumbai. At no point of time, the petitioner dared to raise a plea before the trial Court at Mumbai that the summoning order had already been passed on 29.07.2013 and no fresh exercise was required to be undertaken by the trial Court. Thus, the petitioner is estopped from raising such an argument before this Court. Consequently, the proceedings were initiated afresh before the trial Court at Mumbai in the present complaint and in pursuance of the ordinance issued by the Ministry of Law and Justice, Government of India (Annexure P-8), the proceedings at Mumbai were simply ordered to be transferred to the Court at Gurugram. Consequently, the trial Court at Gurugram was supposed to take up the proceedings from the stage, where it was left pending by the trial Court at Mumbai. It was simply a transfer of proceedings pending at Mumbai to the competent Court of jurisdiction at Gurugram.

8. Still further, the summoning order dated 05.01.2016 was passed by the Court of Judicial Magistrate Gurugram and the order was challenged by the respondent before the Revisional Court on the ground that the trial Court should have passed an order on the application for condonation of delay in filing the complaint, before passing a summoning order. Surprisingly, the present petitioner again preferred to keep mum and did not challenge the order dated 05th

January, 2016 passed by the trial Court, which is being now vehemently contested. Still further, this Court finds sufficient force in the submissions raised by the learned counsel for the respondent that the order passed by the revisional court is an innocuous order as the revisional Court had simply remanded the matter to the trial Magistrate with a direction to decide the application for condonation of delay at the first instance. Even the revisional Court chose not to make any comment even on the merits of the application for condonation of delay and both the parties were at liberty to raise their respective pleas in this regard. Even, the revisional Court had held that the trial Court was competent and was having ample powers to condone the delay, if properly explained. Thus, the challenge made by the petitioner is totally misconceived and pleas raised by the petitioner are liable to be rejected.

9. In view of the above discussion, finding no merits in the present case, the petition is ordered to be dismissed.

11.12.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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