

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

CRR No.1380 of 2023 (O&M)

Reserved on : 19th September, 2023
Pronounced on : 20th September, 2023

Mukesh Kumar

... Petitioner

Versus

State of Haryana & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Bhupender Singh, Advocate for the petitioner.

Mr. Rahul Mohan, Sr. Dy. Advocate General, Haryana
for the respondent/State.

Mr. Sameer S. Tiwari, Advocate for respondent No.2.

MANJARI NEHRU KAUL, J.

CRM No.24551 of 2023

The instant application has been filed for condonation of
delay of 335 days in filing the revision petition.

In the light of averments made in the application and in the
interest of justice, the same is allowed and delay in filing the revision
petition is condoned.

CRR No.1380 of 2023

1. The petitioner is impugning the judgment dated 25.04.2022
passed by learned Additional Sessions Judge, Karnal in CRA
No.172/2018, wherein the complainant (respondent No.2 herein) was

granted liberty to file a fresh complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, 'the Act').

2. Learned counsel appearing on behalf of the petitioner, inter alia, contends that the impugned judgment is against the settled law laid down by Hon'ble the Supreme Court in '**Yogendra Pratap Singh vs. Savitri Pandey & another**' 2014 (4) RCR (Criminal) 321, and has been misinterpreted by the learned Appellate Court below. It has been submitted that it was a matter of record that the complaint had been filed before the expiry of the mandatory period of 15 days from the date of issuance of the legal notice, hence, learned lower Appellate Court had erred in granting liberty to the complainant/respondent No.2 to file a fresh complaint in the Court of learned Judicial Magistrate 1st Class, on the same cause of action, which had already been availed of by him and which would amount to double jeopardy.

3. Learned State counsel along with learned counsel appearing on behalf of respondent No.2/complainant have opposed the prayer and submissions made by the counsel opposite. They have submitted that the law laid down by Hon'ble the Apex Court in **Yogendra Pratap Singh's case (supra)**, has been rightly interpreted by the Appellate Court below and thus, the impugned judgment and order does not warrant any interference. A prayer has, therefore, been made for dismissal of the instant revision petition at the threshold.

4. I have heard learned counsel for the parties and perused the relevant material on record.

5. Hon'ble the Supreme Court, in **Yogendra Pratap Singh's case (supra)**, had formulated following two issues for consideration:

- “(i) Can cognizance of an offence punishable under Section 138 of the Negotiable Instruments Act 1881 be taken on the basis of a complaint filed before the expiry of the period of 15 days stipulated in the notice required to be served upon the drawer of the cheque in terms of Section 138 (c) of the Act aforementioned? And,*
- (ii) If answer to question No.1 is in the negative, can the complainant be permitted to present the complaint again notwithstanding the fact that the period of one month stipulated under Section 142 (b) for the filing of such a complaint has expired?”*

6. The Hon'ble Apex Court, while answering the first issue in the negative, reiterated that the complaint under Section 138 of the Act, if filed before the expiry of 15 days of service of notice, could not be treated as complaint in the eyes of law and any criminal proceedings initiated on such complaint were, thus, liable to be quashed.

7. While dealing with the second issue, the Court in **Yogendra Pratap Singh's case (supra)**, held that while the complainant cannot re-present the same complaint at a later stage, however, a remedy of filing a fresh complaint would still be available to him. The relevant extract of the aforementioned judgment is reproduced as under:

“42. Now, since our answer to question (i) is in the negative, we observe that the payee or the holder in due course of the cheque may file a fresh complaint within

one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to question (i). As we have already held that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the Court of sufficient cause. Question (ii) is answered accordingly.”

8. Adverting to the case in hand, no doubt the learned trial Court erred in proceeding with a complaint, which was premature. However, this Court finds no illegality, much less perversity with the Appellate Court judgment granting the liberty to the complainant in view of the law laid down in **Yogendra Pratap Singh’s case (supra)**. The revision petition accordingly stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

September 20, 2023
rps

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