

CRM-M-28190-2023

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

**CRM-M-28190-2023
Date of Decision: 09.08.2023**

Jatin Arora @ Jitin Vasdev

..... Petitioner

Versus

Gian Jain

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Mayur Kanwar, Advocate,
for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

1. The present petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of the order dated 02.05.2023 passed by the Sessions Judge, Ludhiana, in CRR-7096-2022 titled as 'Jatin Arora Vs. Gian Jain', whereby the revision petition filed against the order dated 24.02.2020 passed in Complaint No.COMA/28968/2019 under Sections 138 of the Negotiable Instruments Act, has been dismissed.

2. The brief facts of this case are that the petitioner is alleged to have received supplies of knitted cloth from the complainant. To discharge the liability of payment of price of the consignment, the petitioner had issued two cheques in favour of the complainant. Both the cheques having been defaulted. A criminal complainant under Section 138 of the Negotiable Instruments Act was filed by the complainant. In the said complaint, the petitioner had been summoned by the Trial Court. Challenging the summoning order, the petitioner preferred a revision petition before the

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Court of Sessions Judge, Ludhiana. However, the said revision petition has also been dismissed by the lower revisional Court. It is challenging the proceedings before the Trial Court, as well as, the revisional order; that the present petition has been filed.

3. It is submitted by the learned counsel for the petitioner that, at least, the complaint qua one cheque had already become time barred because the date of return memo of the cheque is 05.08.2019, whereas the legal notice was issued on 05.09.2019. Therefore, the process was barred, at least, by one day. Qua the second cheque as well, the petitioner was not having enforceable liability. Therefore, the complaint and the summoning order both are bad.

4. Having heard learned counsel for the petitioner and having perused the case file, this Court finds that the complainant had submitted a notice to the petitioner qua default of two cheques. There is no dispute that the legal notice was within limitation, at least, qua one cheque. So far as the other cheque, qua which the return memo is dated 05.08.2019 and the legal notice was issued on 05.09.2019, it deserves to be noticed that it is the positive assertion of the complainant that he received the said return memo on 07.08.2019. Counted from that date, undisputedly, the process is not time barred. Whether the complainant is right in asserting the date of receipt of the return memo to be on 07.08.2019 or not is a matter of evidence, which will be seen during the trial. Hence, at this stage, this fact is totally irrelevant. In any case, qua other cheque, there is not even in dispute that

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the process was initiated within time. Therefore, by any means, the complaint cannot be quashed. Even the summoning order has rightly been passed by the Trial Court.

5. Moreover, the petitioner has already availed the remedy of revision before the lower Appellate Court. Section 399(3) of the Code of Criminal Procedure bars the second revision by the same party, who has already availed the legal remedy of revision before the lower Appellate Court. Although, the present petition is drafted and filed under Section 482 Cr.P.C, however, what the petitioner could not have done directly; cannot be permitted to do even indirectly. Obviously, the present petition is the second attempt on the same aspect on which the petitioner already failed in the revision before the lower revisional Court. Therefore, even the factum that the present petition has been filed under Section 482 Cr.P.C. would not make the present petition as worth entertaining.

6. In view of the above, the present petition is dismissed on merits, as well as, qua maintainability.

(RAJBIR SEHRAWAT)
JUDGE

09.08.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No