

2024:PHHC:154718



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

268

CRM M-7941 of 2020

Date of Decision: 25.11.2024

Usha Rani

...Petitioner

Versus

Rajinder Chopra

... Respondent

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

Present : Mr. Saurabh Kapoor, Advocate
for the petitioner.

None for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the order dated 20.08.2018 (Annexure P-7) passed by the Court of Judicial Magistrate 1st Class, Ludhiana bearing filing No. 62379 dated 18.08.2018 and registration No. 11127 dated 20.08.2018, whereby, the petitioner has been ordered to be summoned to face trial under Section under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**'))

2. Learned counsel for the petitioner contended that as per the complainant, the petitioner had taken a friendly loan of Rs.3,15,000/- from the respondent in the month of January 2017 and promised to return the same within 06 months. In order to discharge

his legally enforceable liability, the petitioner had issued a cheque bearing No. 982294 dated 11.07.2018 for Rs. 3,15,000/- drawn on State Bank of India, Gill Road, Ludhiana in favour of the respondent. At the time of issuance of the cheque, the petitioner assured the complainant/respondent that the cheque will be encashed, however, on 19.07.2018, the cheque was dishonoured by the banker of the petitioner with the remarks "accounts blocked." Thus, the petitioner was having malafide intention from the very beginning to cheat the respondent/complainant. The respondent issued a legal notice dated 03.08.2018 to the petitioner, which was posted on 06.08.2018. The notice was duly received by the petitioner and she sent a reply to the said notice on 11.08.2018.

3. Learned counsel for the petitioner contended that the respondent had misused the cheque in question and had raised demand by issuing a legal notice dated 03.08.2018, which was sent through registered post on 06.08.2018. The petitioner sent a reply that he neither had taken a loan nor had any concern with the respondent. Ultimately, without waiting for expiry of statutory period of 15 days, the respondent filed a criminal complaint on 18.08.2018. The Judicial Magistrate 1st Class without applying his judicial mind, summoned the petitioner wrongly. He further contended that on 18.08.2018, the statutory period of 15 days had not expired and no offence under Section 138 of the Act was made out against the petitioner.

4. Notice was issued to the respondent/complainant. However, the respondent was served but no one appeared on his behalf. Again, the respondent was ordered to be served through his trial Court counsel and again the respondent was served through his counsel. Still, the respondent chose not to appear before this Court.

5. I have heard the learned counsel for the petitioner and perused the record.

6. In the present case, the cheque was issued on 11.07.2018 and the same was dishonoured on 19.07.2018. A legal notice dated 03.08.2018 was posted on 06.08.2018 and the complaint in the present case was filed on 18.08.2018, i.e., well before the expiry of the statutory period of 15 days as provided in proviso (c) of Section 138 of the Act.

7. Different High Courts had different views regarding the maintainability of the complaints filed before the expiry of statutory period of 15 days. Some Courts were of the view that if the complaint was filed prematurely, its maturity could be awaited or it could be returned to the complainant for filing it later while some High Courts were of the view that the complaints which were filed before the expiry of 15 days period were not maintainable.

8. To overcome the conflict, the matter was referred to the Three Judges Bench in the matter of *Yogendra Pratap Singh Vs.*

Savitri Pandey and another 2014 (4) RCR Criminal 321 posing the following two questions:-

(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?

9. The Hon'ble Supreme Court considered various decisions on the issue. It overruled its own decision in case of ***Narsingh Das Tapadia Vs. Goverdhan Das Partani and another, 2000(4) SCC 39: (2000) 7 SCC 183*** and concluded as under:-

“37. A complaint filed before expiry of 15 days from the date on which notice has been served on drawer/accused cannot be said to disclose the cause of action in terms of Clause (c) of the proviso to Section 138 and upon such complaint which does not disclose the cause of action the Court is not competent to take cognizance. A conjoint reading of Section 138, which defines as to when and under what circumstances an offence can be said to have been committed, with Section 142(b) of the NI Act, that reiterates the position of the point of time when the cause of action has arisen, leaves no manner of doubt that no offence can be said to have been committed unless and until the period of 15 days, as prescribed Under Clause (c) of the proviso

to Section 138, has, in fact, elapsed. Therefore, a Court is barred in law from taking cognizance of such complaint. It is not open to the Court to take cognizance of such a complaint merely because on the date of consideration or taking cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer/accused has elapsed. We have no doubt that all the five essential features of Section 138 of the NI Act, as noted in the judgment of this Court in **Kusum Ingots and Alloys Ltd. v. Pennar Peterson Securities Ltd. and Ors. etc.** and which we have approved, must be satisfied for a complaint to be filed Under Section 138. If the period prescribed in Clause (c) of the proviso to Section 138 has not expired, there is no commission of an offence nor accrual of cause of action for filing of complaint Under Section 138 of the NI Act.

38. We, therefore, do not approve the view taken by this Court in **Narsingh Das Tapadia v. Goverdhan Das Partani and Anr.** and so also the judgments of various High Courts following Narsingh Das Tapadia that if the complaint Under Section 138 is filed before expiry of 15 days from the date on which notice has been served on the drawer/accused the same is premature and if on the date of taking cognizance a period of 15 days from the date of service of notice on the drawer/accused has expired, such complaint was legally maintainable and, hence, the same is overruled.

39. Rather, the view taken by this Court in **Sarav Investment and Financial Consultancy** wherein this Court held that service of notice in terms of Section 138

proviso (b) of the NI Act was a part of the cause of action for lodging the complaint and communication to the accused about the fact of dishonouring of the cheque and calling upon to pay the amount within 15 days was imperative in character, commends itself to us. As noticed by us earlier, no complaint can be maintained against the drawer of the cheque before the expiry of 15 days from the date of receipt of notice because the drawer/accused cannot be said to have committed any offence until then. We approve the decision of this Court in Sarav Investment and Financial Consultancy and also the judgments of the High Courts which have taken the view following this judgment that the complaint Under Section 138 of the NI Act filed before the expiry of 15 days of service of notice could not be treated as a complaint in the eye of law and criminal proceedings initiated on such complaint are liable to be quashed.

40. Our answer to question (i) is, therefore, in the negative.”

“41. Section 142 of the NI Act prescribes the mode and so also the time within which a complaint for an offence under Section 138 of the NI Act can be filed. A complaint made under Section 138 by the payee or the holder in due course of the cheque has to be in writing and needs to be made within one month from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. The period of one month under Section 142(b) begins from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. However, if the complainant satisfies the Court that he

had sufficient cause for not making a complaint within the prescribed period of one month, a complaint may be taken by the Court after the prescribed period. 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”.

10. In a similar controversy, the Hon’ble Supreme Court of India has held in the matter of **Gajanand Burange Vs. Laxmi Chand Goyal, 2022(4) R.C.R. (Criminal) 500** as follows:-

“9. We are of the view that the respondent would be entitled to the benefit of the determination on the second issue, as extracted above.

10. Hence, the following order:-

(i) The impugned judgment and order of the Single Judge of the High Court of Chhattisgarh dated 28 November 2018 shall stand set aside; and

(ii) The respondent would be at liberty to institute a fresh complaint and since the earlier complaint could not be presented within the time prescribed by Section 142(b) of the NI Act, the respondent would be at liberty to seek the benefit of the proviso by satisfying the trial Court of sufficient cause for the delay in instituting the complaint”.

11. In the present case also, it is held that the complaint under Section 138 of the Act, which was filed before the expiry of the 15 days of service of notice, could not be treated as a complaint in the eyes of law and the criminal proceedings initiated on such a complaint were liable to be quashed. Thus, the complaint (Annexure P-2) was premature and not maintainable. The petition is allowed and impugned complaint and subsequent proceedings taken therein are quashed. The complainant-respondent may file fresh complaint within two months from today in the Court of competent jurisdiction raising the grievance in relation to the said cheque referred to in the impugned complaint. The delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the Act, as held in Yogendra Pratap Singh's case (supra). The petitioner can also seek return of his original documents which prayer shall be dealt with in accordance with law by the Court concerned expeditiously to enable him (complainant) to file a fresh complaint.

12. A copy of this order may be communicated to the concerned Court as well as to the respondent.

25.11.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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