IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Reserved on:06.02.2024
Pronounced on: 09.02.2024

1. CRM-M-10240 of 2020 (O&M)

Daljeet Singh .....Petitioner

Vs.

M/s Classic Finserve Pvt. Ltd. (Regd.) Office .....Respondent

2. CRM-M-10096 of 2020 (O&M)

Kamaljit Kaur .....Petitioner

Vs.

M/s Classic Finserve Pvt. Ltd. (Regd.) Office .....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Brijesh Nandan, Advocate
for the petitioners.

Mr. H.S. Dhindsa, Advocate
for the respondent.

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DEEPAK GUPTA, J.

This order shall dispose of two petitions titled above, as both of them have arisen out of the same transaction, in which petitioners of the two cases, who are the family members, allegedly issued cheques in favour of the same respondent- complainant, which were later on dishonored. Petitioners have sought quashing of the complaints as well as the summoning order.

2.1 Perusal of the paper book reveals that complaint No.COMA/7777 of 2019, titled *M/s Classic Finserve Pvt. Ltd. Vs. Daljeet Singh;* and complaint No.COMA/7773/2019 titled *M/s Classic Finserve Pvt. Ltd. Vs. Kamaljit Kaur,* (Annexure P.2 in both the petitions), were filed by the respondent seeking prosecution of the petitioners under Section 138 of the Negotiable Instruments Act.

2.2 It was alleged that the two petitioners Daljeet Singh and Kamaljit Kaur along with other family members were running the firms titled M/s Kamal Food Products and Amrit Foods Products, which were having professional relations with the complainant- Company. Two of the family members, namely, Hardeep Singh and Smt. Satvir Kaur agreed to sell two of their family properties in favour of the complainant. When the documents were handed over to the complainant, it was found that the properties were under mortgage. The petitioners and other family members assured to clear the loan. Consequent thereto, an agreement dated 03.04.2017 was executed in respect of one of the properties, of which petitioner – Kamaljit Kaur was the owner and an amount of ₹60 lacs was paid to her as earnest money. By way of another agreement dated 03.04.2017, second property was agreed to be sold by petitioner – Daljeet Singh and his wife and an amount of ₹25 lacs was paid. With the help of those amounts, accused cleared the loans. However, they failed to execute the sale deeds pursuant to the agreements to sell. Later on, the accused-petitioners told the complainant that they will compensate it for the loss occurred. Their request was accepted by the complainant. Complainant submitted that as per the terms of agreement, it was entitled to double the amount of the earnest money. In January, 2018, accused paid an amount of ₹60 lakhs from the account of Kamaljit Kaur and assured to pay the remaining amount of compensation @ 12.6% per annum. Later on, accused agreed to sell another property but failed to get the sale deed executed.

2.3 Ultimately, the two petitioners, i.e. Daljeet Singh and Kamaljit Kaur, in order to clear the balance outstanding amount along with compensation, paid the following two cheques to the complainant:

(i) Cheque No.097054 dated 31.01.2019 for an amount of ₹28,83,765/- issued by petitioner – Daljeet Singh; and

(ii) Cheque No.739020 for an amount of ₹3,56,012/- issued by petitioner – Kamaljit Kaur.

On presentation, both the cheques were returned unpaid by the banker of the petitioners vide return memos dated 30.04.2019 with remarks “Stop Payment”.

2.4 With regard to cheque issued by Daljeet Singh, complaint No.COMA-7777 of 2019 was filed against Daljeet Singh *(petitioner in CRM-M-10240 of 2020)*, submitting that legal notice dated 29.05.2019 was served upon the accused- petitioner to pay the cheque amount of ₹28,83,765/- within 15 days of the receipt of the notice, but accused-petitioner failed to respond to the notice. It is also mentioned that earlier, complainant had served a legal notice dated 22.05.2019 not only to the accused- petitioner Daljeet Singh & Kamaljeet Kaur but also to other family members in respect of both the cheques. However, in order to avoid any technical legal issues, complainant served the accused with fresh legal notice dated 29.05.2019.

2.5 As accused-petitioner failed to make the payment despite notice, so the complaint was filed to prosecute the accused under Section 138 of the NI Act.

2.6 With the similar allegations, complaint No.COMA-7773/2019 was filed against accused Kamaljit Kaur *(petitioner in CRM-M-10096 of 2020)* in respect of dishonour of cheque No.739020 for an amount of ₹3,56,012/- with the same averments that after dishonour of the cheque vide return memo dated 30.04.2019, legal notice dated 29.05.2019 was issued but with no response and that earlier a joint legal notice dated 22.05.2019 was sent to the petitioner and other family members in respect of two cheques but to avoid legal and technical objection, the fresh notice dated 29.05.2019 was sent, but no payment was made.

7. After recording the preliminary evidence, learned Judicial Magistrate Ist Class, Ludhiana issued summoning orders on 08.07.2019 in both the complaints.

8.1 The petitioners have challenged the two complaints as well as the summoning orders before this Court on the similar grounds.

8.2 Learned counsel for the petitioners has made two fold submissions before this Court. His first contention is that the complaints are barred by limitation, as the same should have been filed within 45 days from the date of return memo dated 30.04.2019, when the cheques were returned dishonored. The second submission made by learned counsel for the petitioners is that once the legal notice dated 22.05.2019 had been sent by the complainant- respondent, he could not have served the second legal notice dated 29.05.2019 and that the second notice was sent to extend the period of limitation.

9. Learned counsel for the respondent- complainant has refuted both the contentions by submitting that looking from any angle, both the complaints are within limitation, having been filed on 06.07.2019. Learned counsel for the respondent – complainant has placed on record the copy of information regarding the filing of the complaints before the trial Court concerned from the website of the Court in order to show that filing was done on 06.07.2019 though the registration number was given on 08.07.2019, on which date the preliminary evidence was recorded and the summoning order was passed. Learned counsel further submits that even the second notice was sent within a period of 30 days from the date of return

memo and there is no bar to send the legal notice. He prayed for dismissal of both the petitions.

10. After considering submissions of both the sides, this Court find no merit in any of the submissions raised by Ld. Counsel for the petitioners.

11. The relevant dates are not in dispute to the effect that bank return memo regarding dishonour of the cheques in question is dated 30.04.2019 and that first joint legal notice dated 22.05.2019 was sent qua dishonour of both the cheques not only to the petitioners but also to other family members and later on, second legal notice was individually sent to the petitioners on 29.05.2019 and that the complaints were filed on 06.07.2019.

12. The proviso to Section 138 of the NI Act and also Section 142(1)(b) of the NI Act are relevant in this case so as to calculate the limitation period. These read as under:-

> *"**S. 138.** xxxxxxxxxxxxx*
> *Provided that nothing contained in this section shall apply unless—*
> *(a) the cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
> *(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, **within thirty days** of the receipt of information by him from the bank regarding the return of the*
> *cheque as unpaid; and*
> *(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, **within fifteen days** of the receipt of the said notice.*"

S. 142 (1) (b)

> *"(b) such complaint is made **within one month** of the date on which the cause of action arises under clause (c) of the proviso to section*

138"

13. The proviso to Section 138 to be read with Section 142 (1) (b) of the NI Act would make out that following conditions are required to be fulfilled for taking cognizance of an offence under Section 138 of the NI Act:-

(i) cheque is presented within period of validity or within three months from the date on which it is drawn, whichever is earlier;

(b) the payee or the holder in due course *(complainant – respondent in the present case)* makes demand of the cheque amount by giving a notice in writing to the drawer of the cheque *(accused- petitioners herein)* within 30 days of the receipt of information by him from the Bank regarding return of the cheque as unpaid.

(c) the drawer of the cheque – accused fails to make payment of the cheque amount within 15 days of the receipt of the notice and;

(d) complaint is filed within one month from the date on which cause of action arises under clause (c) of the proviso to Section 138 of the NI Act.

14. The conjoint reading of the afore-said provisions would clearly make out that cause of action arises on the expiry of 15 days' period from the date of receipt of the legal notice by the accused, when he fails to make the payment. Reliance can also be placed upon ***Sadanandan Bhadran Vs. Madhavan Sunil Kumar, AIR 1998 SC 3034,*** wherein it was held that consequent upon the failure of the drawer to pay the money within a period of 15 days as envisaged under clause (c) of the proviso to Section 138 of the NI Act, the liability of the drawer for being prosecuted for the offence, he has committed, arises and the period of one month for filing the complaint under Section 142 is to be reckoned accordingly.

15. In the present case, the individual legal notice regarding dishonour of the respective cheques were sent to the two petitioners – accused on 29.05.2019. Assuming that accused received the legal notices on the same day, they were required to make payment of the cheque amount within next 15 days i.e. up to 13.06.2020. It is from this date i.e., failure of the accused- petitioners to make payment that the cause of action has arisen in favour of the complainant – respondent and the complaint can be filed within next 30 days as per Section 142(1)(b) of the NI Act.

16. As has been held by Hon'ble Supreme Court in ***M/s Saketh India Ltd. Vs. M/s India Securities Ltd, 1999(2) R.C.R. (Criminal) 153****,* the period of one month prescribed under Section 142 (1) (b) of the NI Act is to be reckoned by excluding the date on which the cause of action arose. In the case before Hon'ble Supreme Court, the notices were served upon the accused on 29.09.1995. The accused failed to make payments and so, it was found that cause of action for filing the complaint will arise on 15.10.1995. It was held further that the day of 15^{th} October, i.e. the day on which the cause of action arose, was required to be excluded for counting the period of one month and, therefore, the complaint filed on 15.11.1995 was within limitation.

17. Thus, in present case, complaint could have been filed in the present case within one month at least from 15.06.2019 onwards. In the present case, the complaint has been filed on 06.07.2019, which is clearly within the limitation period of 30 days. As such, the contention raised by learned counsel for the petitioner that complaint is barred by limitation is found to be without any substance.

18. Coming to the second contention, as noticed above that on receipt of the information from the Bank regarding return of the cheque as

unpaid, the payee (complainant) is required to make payment for the cheque amount by giving a notice in writing within 30 days of the receipt of the information. In this case, Bank issued return memo regarding the cheques as unpaid on 30.04.2019. The legal notice dated 22.05.2019 as well as 29.05.2019, are both within limitation period of 30 days from the date of return memo. There is no legal bar in serving the second notice, if complainant finds that there is some legal technical defect in the earlier notice, provided the subsequent notice has been issued within 30 days from the date of return memo. As cause of action arises only after expiry of 15 days period from the date of receipt of the legal notice by the accused, so it is obvious that accused gets more time to make payment, in case subsequent notice is sent to him and as such, he is not prejudiced in any manner on account of subsequent notice, sent to him within the time period of 30 days from the date of return memo.

19. Consequent to above discussion, this court finds no merit in any of the petitions.

Dismissed.

A photocopy of this order be placed on the file of connected case.

February 09, 2024 **(DEEPAK GUPTA)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No