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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-613-2022
DECIDED ON: 12.02.2024

YOGRAJ SINGH

.....APPELLANT

VERSUS

HARPAL SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Puneet Bali, Sr. Advocate with
Mr. Shiwam Sharma, Advocate
for the appellant.

None for respondent.

SANDEEP MOUDGIL, J (ORAL)

1. The instant appeal came up for hearing before this Court, whereby, the judgment/order dated 25.04.2022 passed by Judicial Magistrate 1st Class, Chandigarh has been assailed vide which a complaint under Sections 138 & 142 of Negotiable Instruments Act, 1881 (for short 'NI Act') and Section 420 of the Indian Penal Code 1860 has been dismissed.

2. The case set put on behalf of the appellant-complainant unfolds as a complaint under Sections 138 and 142 of NI Act and Section 420 IPC was preferred with the averment that the respondent-accused had availed a loan to the tune of Rs.59,15,000/- from the appellant-complainant, which was by way of various cheques. The respondent-accused is stated to have promised to re-pay the said amount within a period of one year but he failed to honour the said promise, as he did not return a single penny out of the said amount. The appellant-complainant has

supported the assertion relying upon an affidavit dated 04.02.2021 executed by the respondent-accused qua the cheques in question towards the discharge of legal debt either by himself or through his family members and in furtherance thereof, issued post dated cheque bearing No. 727864 for an amount of Rs.59,15,000/- drawn at Punjab National Bank, Manimajra.

3. The said cheque was presented by the appellant-complainant on 02.08.2021 but the same was dishonoured and returned by the bank on 05.08.2021 with the remarks "*Payment stopped by Drawer*". Accordingly, legal notice dated 24.08.2021 was served through registered post and in spite of due service of the same, the respondent-accused failed to make the payment under the covered cheque, as has been alleged by the appellant-complainant before the trial Court.

4. During the course of proceedings, the complaint was considered for recording of preliminary evidence and thereafter, it was being returned for consideration and summoning of the respondent-accused on numerous occasions before Judicial Magistrate Ist Class, Chandigarh finally dismissing the complaint vide impugned order dated 25.04.2022 observing the same to be pre-mature and not maintainable with liberty to initiate afresh complaint as and when cause of action arises, as per law.

5. It is in this backdrop of the facts and circumstances, instant appeal came to be filed by the appellant-complainant contending that the trial Court has erred while passing the impugned order and also failed to appreciate that the complaint was preferred within limitation inasmuch as the cheque was returned dishonoured on 05.08.2021. The legal notice was issued on 24.08.2021 i.e. within the stipulated period of 30 days and thereafter, expiry of 15 days from the said legal notice, instant complaint was filed on 05.10.2021.

6. Heard.

7. The trial Court while passing the impugned order dated 25.04.2022, has relied upon the order dated 10.01.2022 passed by the Apex Court in *Suo Motu* Writ Petition (Civil) No.3 of 2020 whereby, it was directed that the period ranging from 15.03.2020 till 28.02.2022 shall stands excluded in computing the period prescribed under proviso (b) and (c) of Section 138 of NI Act, 1881.

8. In the instant case the limit regarding dishonour of cheque was received by the appellant-complainant on 05.08.2021 and trial Court held that the drawer shall not be obliged to make the payment of cheque amount to the payee within 15 days of the receipt of notice and as such no cause of action has arisen to him for initiating the complaint on 05.10.2021 and in that endeavour, has considered the judgment of the Apex Court in ***"Yogendara Pratap Singh vs. Savitri Panday and another",*** ***(2014) 10 SCC 713;*** wherein, it has been held that a complaint filed under Section 138 of NI Act prior to accrual of cause of action shall not be maintainable. Thus, dismissed the same being pre-mature though, granted the liberty to file fresh complaint as and when cause of action arises, as per law.

9. In the case in hand, the cause of action has arisen in favour of the appellant-complainant once the cheque was returned with remarks "*Payment stopped by Drawer",* then and there and in pursuance thereof, legal notice was served, which stands duly received by the respondent-accused on 24.08.2021 and at that time it was open for the respondent-accused to take the plea for seeking some time to make good the payment by returning the friendly loan, if it has been availed by him but he choose not to respond to the said legal notice at all, even refusing any such liability and very rightly the complaint came to be instituted on 05.10.2021. Since there is no bar to initiate proceedings under Section 138 of the Act as per the

orders passed by the Apex Court in *Suo Motu* writ petition (Civil) No.3 of 2020 (supra) and that cannot be intent at all of that judgment until or unless respondent-accused respond and back to seek exemption of that period to re-pay the amount or to deny any such liability.

10. Even otherwise still if the respondent-accused is summoned after recording of preliminary evidence, which the appellant-complaint has already concluded, the instant complaint ought not to have been dismissed as pre-mature and ought to have proceeded further to adjudicate the complaint on merit.

11. Until or unless the plea of exclusion of the period ranging from 15.03.2020 till 28.02.2022 was raised for excluding the prescribed period under Section 138 proviso (b) and (c) of the NI Act.

12. In the light of above, there is force in the argument raised by learned Senior Counsel for the appellant and hence, the appeal is accepted and the order dated 25.04.2022 is ordered to be set aside and trial Court is directed to proceed in the complaint at very stage at which it was dismissed on 25.04.2022.

(SANDEEP MOUDGIL)
JUDGE

12.02.2024

Meenu

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