



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

**CRM-M-58774-2023
Date of Decision: 04.09.2024**

PRADEEP KUMAR

.....PETITIONER

VERSUS

ARVIND SOOD

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Jasbir Singh Dadwal, Advocate
For the petitioner.

Mr. Varinder Singh, Advocate
For the respondent.

SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been preferred under section 482 Cr.P.C for quashing of Criminal Complaint No. NACT/125/28.04.2017 titled as “Arvind Sood Versus M/s Sawan Buildtech and another”(Annexure P-1), under Section 138 of the Negotiable Instruments Act, 1881, pending before the court of Judicial Magistrate Ist Class, Dera Bassi and also the summoning order dated 02.01.2018, (Annexure P-3), whereby petitioner has been summoned to face trial, alongwith all subsequent proceeding arising therefrom.

2. It is contended by the learned counsel for the petitioner that the petitioner has been falsely implicated in the present case as no offence is made out against the present petitioner. It is contended that the petitioner is



Proprietor of M/s Sawan Buildtech and he assigned the work of construction to the respondent/complainant and in lieu of the payment, some advance cheques were issued to the respondent, besides those cheques, respondent also received cash payments from the petitioner. The petitioner had already made the payment in cash to the respondent as such the petitioner demanded cheque No.773181 dated 27.02.2017 amounting to Rs.2.00 lacs from the respondent but he did not do so and accordingly, the petitioner stopped payment/clearance of the said cheque. The respondent, subsequently, got issued a legal notice on 05.04.2017, i.e., after 30 days of return of the said cheque.

3. It is further contended that the respondent filed complaint under Section 138 of the Negotiable Instruments Act and also presented cheque in question before the Hon'ble Court with an application seeking condonation of delay in sending the legal notice after the stipulated period,(Annexures P-1 and P-2), respectively. However, the trial Court has summoned the petitioner, vide impugned order dated 02.01.2018, (Annexure P-3), illegally and erroneously. As the respondent has completely failed to serve the legal notice upon the petitioner within a stipulated period of 30 days, as such, the complaint is not maintainable and accordingly, the summoning order is also bad in law and consequently, the impugned complaint and the summoning order are liable to be quashed being hit by the bars of limitation.

4. On the other hand, learned counsel for the complainant/respondent has argued that the delay has been condoned by the learned trial Court before ordering the summoning of the petitioner/accused as there was a delay of only two days in filing the complaint. As such, it will be incorrect on the part of the petitioner to say that the summoning has been ordered without considering the



application for condonation of delay and accordingly, the present petition is liable to be dismissed.

5. I have heard both the sides and also perused the case file with their able assistance.

6. The learned trial Court has summoned the petitioner as an accused to face trial in the complaint, Annexure P-1, vide order at Annexure P-3, a perusal whereof has revealed that the trial Court has though condoned the delay of 2 days in filing the appeal but it has not taken into account the glorious fact that the legal notice itself was served beyond the prescribed limit of 30 days under the Act.

7. Thus, the respondent had sought condonation of delay of 2 days in serving the legal notice upon the accused and not sought condonation of delay in filing the appeal. Hence, the summoning order prima facie is defective and illegal, which cannot be maintained in the eyes of law. Furthermore, the complaint itself is hit by the principles of law of limitation because the legal notice was not served within the stipulated period of 30 days from the receipt of return memo.

8. For reference it is apposite to mention section 138 of Negotiable Instruments Act 1881 which is reproduced herein below:-

138. Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it



made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six 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. Explanation.—For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.]

A perusal of the Clause (b) to proviso to the Section clearly states that nothing contained in the section shall apply unless the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the amount of cheque by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of the information by him from the bank regarding return of the cheque as unpaid. Further, The legal position on the aspect that three conditions, as laid down in [Section 138](#) NI Act, are to be



and Anr AIR 2014 SUPREME COURT 660", Supreme Court held as under:-

"15. It is, thus, apparent that he received the information about the dishonor of the cheque on 10.11.2008 itself. However, he did not send the legal notice within 30 days therefrom. We, thus, find that the complaint filed by him was not maintainable as it was filed without satisfying all the three conditions [laid down in Section 138](#) of the NI Act as explained in para 12 of the judgment in the case of MSR Leathers, extracted above."

9. Resultantly, the present petition succeeds and stands allowed in the terms that the impugned Criminal Complaint No. NACT/125/28.04.2017 titled as "Arvind Sood Versus M/s Sawan Buildtech and another" Annexure P-1, filed under Section 138 of the Negotiable Instruments Act, 1881, pending before the court of learned Judicial Magistrate Ist Class, Dera Bassi and also the summoning order dated 02.01.2018, Annexure P-3, with all subsequent proceedings are hereby quashed qua the petitioner.

(SANDEEP MOUDGIL)
JUDGE

04.09.2024
anuradha (v)

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