

2024:PHHC:172465

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-61415-2024 (O&M)

Date of decision: 10.12.2024

MAYA DEVI

....PETITIONER

Versus

DEEPAK KUMAR

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Aditya Dassaur, Advocate
for the petitioner.

SANDEEP MOUDGIL, J.

1. This is second petition filed by the petitioner, under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023, praying quashing of complaint No. COMA/6405/2023 dated 06.05.2023, Annexure P-1, titled “Deepak Kumar Vs. M/s Maya Devi” filed by respondent under Section 138 of the Negotiable Instruments Act, 1881, pending before the court of learned Judicial Magistrate Ist Class, Ludhiana, with all its subsequent proceedings, including the summoning order dated 08.05.2023, Annexure P-5, and also the order dated 13.09.2024, Annexure P-7, whereby application for dismissal of the complaint qua the petitioner has been dismissed, by the learned Judicial Magistrate Ist Class, Ludhiana, illegally and erroneously.

2. It is contended by the learned counsel for the petitioner that the learned Judicial Magistrate Ist Class, Ludhiana (for short – ‘trial Court’) has failed to apply its judicious mind before summoning the petitioner to face

trial of the complaint, Annexure P-1, as no offence as alleged is made out against the petitioner as the complaint has been filed on wrong and incorrect facts. The complainant has alleged that the petitioner took a loan of Rs.4.50 lacs from him and in order to discharge the legal debt, issued cheque No.000050 dated 28.03.2023, Annexure P-2, amounting to Rs.3.00 lacs drawn of Bank of India, which was dishonoured with the remarks "01 Exceeds Arrangements". Thereafter, a legal notice was issued to make the payment within 15 days but to no avail, as such, the complaint being filed.

3. It is further contended on behalf of the petitioner that the complaint was filed at pre-mature stage because the legal notice was despatched on 17.04.2023, as per postal receipt, Annexure P-4, and the complaint was filed on 06.05.2023, as such, the complaint was filed before the cause of action having been occurred in favour of the complainant and accordingly, the ingredients of provisions of Section 142 of the Negotiable Instruments Act (for short – 'NI Act') were not fulfilled. There is no evidence on record to show that service of the legal notice. However, the learned trial Court has failed to appreciate this fact, therefore, application, Annexure P-6, for dismissal of the complaint being pre-mature was moved, which has been dismissed by the learned trial Court, illegally and erroneously, vide order at Annexure P-7, by holding that the complaint is not premature, which is against the settled provisions of law. As such, the impugned complaint, Annexure P-1, and the summoning order dated P-5 and the order, Annexure P-7, dismissing the application for dismissal of the complaint are liable to be quashed.

4. Heard and case file also perused.

5. The petitioner's contention is that the impugned complaint is

pre-mature because it has been filed before the arising of cause of action in favour of the complainant from the date of service of legal notice and that there is no evidence on record to show service of the legal notice, Annexure P-3.

6. On perusal of the file it has revealed that the petitioner has himself given a reference to Section 27 of the General Clauses Act, which deals with the presumption of service of a letter sent by post but on the same time, according to her, this presumption is general in nature, which cannot be accepted because neither this Section says so nor the Act says so that its provisions are general in nature. It is the case of the petitioner that the address on which the legal notice was sent was incorrect, therefore, the petitioner cannot say that the above presumption is general in nature and not specifically applicable to her case. As such, this contention raised on behalf of the petitioner is of no help to her case.

7. As far as complaint being filed at a pre-mature stage, the limitation to file a complaint for the offence of cheque bounce before the Magistrate within 30 days of the expiry of 15 days of issuing the cheque bounce notice. First day of issuance of notice is to be excluded and last day is counted. Therefore, to count 15 days from 18.04.2023, the 15th day will be 2nd of May, 2023, however, the complaint has been filed on 06.05.2023. It is not the case of the petitioner that the notice did not reach her on or before 2nd of May, 2023. Her contention is that there is no evidence of service of legal notice on record which cannot be accepted in view of Section 27 of the General Clauses Act and also in view of any defect in the address where the notice was sent. As regards, arising of cause of action, the Section 138 of the N.I.Act, itself, says that the cause of action arises when

the drawer fails to pay the cheque amount to the payee within 15 days of receiving the notice. In this way, the cause of action will arise from 18.04.2023 and after completion of 15 days will conclude on 2nd of May, 2023. Therefore, none of the pleas raised on behalf of the petitioner are of any help to her case.

8. Resultantly, the summoning order dated 08.05.2023, Annexure P-5, and the order dated 13.09.2024, Annexure P-7, are hereby upheld and the present petition stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

10.12.2024

Poonam Negi

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