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

139

2026:PHHC:011778

CRM-M-15888-2024 (O&M)
Reserved on: 15.01.2026.
Date of decision: 27.01.2026.
Uploaded on: 28.01.2026.

SWATI MOTWANI

...Petitioner(s)

VERSUS

M/S STANVAC PRIME PRIVATE LIMITED

...Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Rajesh Lamba, Advocate, with
Mr. Rahul Gugnani, Advocate,
for the petitioner.

Mr. Rajesh Kumar Passey, Advocate,
for the respondent.

VINOD S. BHARDWAJ, J.

Seeking quashing of Complaint bearing No.NACT/10389 dated 31.03.2022, titled as 'M/S Stanvac Prime Private Limited Vs. Smt. Swati Motwani' filed under Section 138 of the Negotiable Instruments Act, 1881 along with the summoning order dated 31.03.2022 passed by the Judicial Magistrate First Class, Gurugram, the present petition has been filed.

2 Learned counsel appearing for the petitioner contends that the respondent had filed the aforesaid complaint pertaining to dishonour of cheque bearing NO.517069 dated 10.09.2021 drawn on Bank of India Branch at Raipur, for a sum of Rs.1,23,250/-. Vide order dated 31.03.2022,

the Judicial Magistrate First Class, Gurugram, had summoned the petitioner for offence under Section 138 read with 141 of the Negotiable Instruments Act, 1881. He submits that after dishonour of the cheque, a legal-cum-demand notice was sent on 22.12.2021. He further submits that a payment of Rs.1,23,250 i.e. amount equal to the value of cheque, was made by the petitioner on 13.01.2022, which fact remains undisputed. It is contended that the said period was a Covid -19 period for which the timelines as well as limitation for making payment of money under Section 138 proviso (b) and (c) had been extended by the Supreme Court upto 28.02.2022. Hence, the payment of the cheque amount was within the limitation prescribed under the N.I.Act, and therefore, the complaint as well as the order of summoning are bad and thus are liable to be set aside.

3 Counsel for the respondent, however, contends that the petitioner owed a total amount of Rs.6,18,040.79 paise and that even though the aforesaid amount of Rs.1,23,250/- transferred vide NEFT on 13.01.2022, however, the same has been adjusted against the total outstanding amounts, hence, the amount is still payable. Besides, the payment of the amount of cheque has not been made within the prescribed timelines, hence, the offence stand committed and completed, hence, there is no error in the order of summoning.

4 I have heard learned counsel appearing for the respective parties and have gone through the documents appended along with the present petition.

5 Before proceeding further into the merits of the case, it would be relevant to refer to the averments made in the criminal complaint that had

been instituted by the respondent-complainant. The relevant extract thereof reads thus: -

> *"13. That on 22.12.2021 accused was liable to pay to the complainant principal amount of Rs. 5,18,040.79 (Rupees Five Lakh Eighteen Thousand Forty and paise seventy Nine) and interest thereon for Rs. 82,887/-(Rupees Eighty Two Thousand Eight Hundred Eighty Seven), which has been calculated @2% per month from May, 2021 to December, 2021 plus Bank and other Charges for Rs. 500/-(Rupeer Five Hundred) regarding dishonour of aforesaid cheque thus making accused's total liabilities for Rs. 6,01,427.79 (Rupees Six Lakh One Thousand Four Hundred Twenty Seven and paise Seventy Nine). Complainant reserves its right to file separate Civil Suit for recovery of entire due amount alongwith upto date interest @2% per month.*
>
> *(Original Cheque i.e. cheque bearing no. 517069 dated 10.09.2021 for Rs. 1,23,250/- (Rupees One Lakh Twenty Three Thousand Two Hundred Fifty) drawn on Bank of India, Raipur Main Branch, Raipur, Chhattisgarh 492001 and cheque dishonour Memos. issued by the Complainant's banker i.e. ICICI Bank Ltd. are annexed herewith as "Annexure-A and Annexure-B".*
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> *14. That Complainant sent Legal Demand Notice Dated 22.12.2021 through advocate to accused/respondent vide Speed post on 22.12.2021 and email and whatsapp also on 28.12.2021 and Speed Post was served upon the accused on 27.12.2021 and Legal Demand Notice dated 22.12.2021 sent vide other modes also served upon the accused, vide Legal Demand Notice dated 22.12.2021 complainant had called upon the accused to make payment of aforesaid dishonoured cheque no. 517069 dated 10.09.2021 for Rs. 1,23,250/- (Rupees One Lakh Twenty Three*

Thousand Two Hundred Fifty) drawn on Bank of India, Raipur Main Branch, Raipur, Chhattisgarh 492001. But inspite of service of Legal Demand Notice dated 22.12.2021 on 27.12.2021 vide speed post accused had not made payment and complied with the same.

(Copy of Legal Demand Notice dated 22.12.2021, Postal Receipt dated 22.12.2021, Speed Post service report, Email and whatsapp service of Legal Demand Notice upon accused are annexed herewith as Annexures "C", "D", "E","F" and "G".)

15. That the complainant has complied with all the requirements of Section 138 of the Negotiable Instruments Act, 1881 as amended upto date namely the cheque in question was presented within the period of its validity, the demand for the payment was made from the accused on 22.12.2021, <u>when aforesaid Demand/Legal Notice sent to accused i.e. within thirty days from the date of receiving information regarding dishonour of aforesaid cheque. After lapse of notice period of 15 days accused made part payment of Rs. 1,23,250/- on 13.01.2022 vide NIFT, which was got confirmed by the complainant from the bank on 14/15.01.2022 and the same was adjusted from total outstanding amount of Rs. 6,01,427.79 (Rupees Six Lakh One Thousand Four Hundred Twenty Seven and paise Seventy Nine) and accused is still liable to pay total amount of Rs. 5,01,364.79, which includes principal amount of Rs. 3,94,790.79 (inclusive of cheque dishonoured amount) and interest for Rs. 1,06,574/-(Rupees One Lakh Six Thousand Five Hundred Seventy Four) plus bank dishonour charges of Rs. 500/-</u>. It is apparent that accused committed offence punishable under section 138 of Negotiable Instruments Act, 1881. Complainant intended to file complaint earlier also but Hon'ble Supreme Court of India vide order dated 10.01.2022 extended suo moto limitation to file case under section 138 of the

Negotiable Instruments Act also on account of Covid 2019 omicron surge and thereafter the said extension period got expired/ended on 28.02.2022 vide further order of the Hon'ble Supreme Court of India. *According to prevalent practice on account of aforesaid orders this Hon'ble Court was not taking cognizance of complaint and passing summoning order against the accused complaint being premature and due to this reason complainant could not prefer present complaint earlier. <u>Hence, present complaint is therefore within the prescribed period of limitation from the date of cause of action</u>."*

(emphasis supplied)

6 The order of summoning passed by the Judicial Magistrate First Class, Gurugram dated 31.03.2022 reads thus: -

"1. Brief facts of the present case are that the accused issued Cheques No. 517069 dated 10.09.2021 for Rs.123250/- to the complainant in discharge of liability. The said cheque(s) was/were dishonoured with remarks "Payment stopped by drawer". Complainant served a legal notice upon the accused but accused failed to make the payment to the complainant.

2. To substantiate the facts, the complainant stepped into the witness box as CW1 and placed on record the original cheque, return memo, legal notice, postal receipts, etc.

3. Heard. Perusal of the documents placed on record reveals that the complainant has presented the cheque within period of validity. <u>Thereafter complainant issued a legal notice to the accused within period of 30 days from the date of receipt of communication about the fact of dishonour of cheque. Accused failed to make the payment to the complainant within stipulated time</u>.

4. Keeping in view the above facts, there is sufficient prima facie ground to proceed against the accused u/s138 r/w Section 141 of Negotiable Instruments Act. As a necessary corollary of the above discussion accused is hereby summoned for commission of offence u/s 138 of Negotiable Instruments Act. Summons be issued to the accused through all modes for 01.06.2022 on filing of process fees, etc. Summon be taken dasti, if so desired."

(emphasis supplied).

7 Sections 138 of the Negotiable Instruments Act, 1881 reads thus: -

"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 exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 4 [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) thecheque 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, 5 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) <u>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</u>.

Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability.

(emphasis supplied).

8 It is evident from a perusal of the undisputed facts that cheque No.517069 dated 10.09.2021 had been issued for a sum of Rs.1,23,250/- towards partial discharge of the liability. It is further not in dispute that the said cheque was dishonoured and that a legal-cum-demand notice dated 22.12.2021 was sent by the respondent, which is claimed to have been received by the petitioner on 27.12.2021. It is also not in dispute that the amount equal to the cheque amount i.e. Rs.1,23,250/- was credited to the respondent-complainant by way of NEFT on 13.01.2022. It is seemingly three days after the expiry of 15 days from the date of the demand notice. It is not in dispute that the period during which the cheque had been dishonoured and the demand notice had been issued was the period of Pandemic Covid – 19.

9 It would further be relevant to add herein that the Supreme Court, in its order dated 10.01.2022, passed in Suo Motu Writ Petition No.3

of 2020 directed as under: -

> *"5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:*
>
> *xxx xxx xxx*
>
> *III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*
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> *IV.* ***It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12Aof the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881*** *and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."*
>
> *(emphasis supplied).*

10 It is evident from a perusal of the above that the supreme court extended the limitation under Section 138 and proviso (b) and Proviso (c) till 28.02.2022. It flows from a plain reading thereof that that drawer of cheque would be within its right to make payment of the amount in question to the

payee or to the holder of the cheque in due course within the such extended period of limitation.

11 It further stands established from the averments in the complaint itself that the legal demand notice dated 22.12.2021 was received by the petitioner on 27.12.2021. The period of 15 days' to make the payment, specified in Section 138, Proviso (c), ended on 11.01.2022. The amount equal to the value of cheque was undisputedly transferred on 13.01.2022 i.e. on the 17th day after receipt of the legal demand notice. The respondent-complainant does not dispute the sequence as above but justifies continuation of proceedings on the ground of transfer of money being delayed by 02 days and the right to claim adjustment of the deposited amount against other payables. It is also evident from the pleadings in the complaint that the respondent-complainant has himself availed benefit of the order of the Supreme Court of India dated 10.01.2022 for claiming an extension in the period of limitation for institution of the complaint, however, the same benefit is not being extended to the petitioner herein. A dual yardstick is thus being applied by the respondent-complainant.

12 The order issued by the Supreme Court leaves no room for speculation or doubt that the limitation prescribed under Section 138 (c) stands extended upto 28.02.2022. The payment was made on 13.01.2022 i.e. much before the period of prescribed limitation of 28.02.2022 as per the order dated 10.01.2022 passed by the Supreme Court. Hence, the petition deserves to be allowed on the said score alone.

13 However, adverting to the issue as to whether the amount could be adjusted against other payments or had to be adjusted only against the

cheque amount.

14 As per key accounting principles, once the amount paid is evidently relatable to the cheque dishonoured and the demand raised, the payment has to be made or applied against that specific invoice. This follows the principle of specific identification in accounting. In such circumstances payments are matched to the exact obligation intended to settle. In such circumstances, the amount received has to be adjusted only against the said cheque or invoice and is not to be generally adjusted against any other 'on account' payment. The amount transferred being exact to the cheque and in close proximity to the demand notice and within the prescribed period of limitation could not have been claimed to be set off for other dues.

15 Under such circumstances, the intent of the parties is fully established to the effect that the payment in question has to be adjusted against the demand so raised.

16 The respondent-complainant has nonetheless chosen to continue with the proceedings under Section 138 of the Negotiable Instruments Act, 1881 notwithstanding that he admitted even in the complaint to have received the amount of money equivalent to the cheque in dispute and that too within the period of extended limitation as per the order of the Supreme Court. Surprisingly, the order of summoning makes no mention of the said aspect and as to whether the deposit has to be deemed payment or not.

17 Under the given circumstances, I am of the opinion that the petitioner-accused, having paid the amount within the time frame as prescribed under Section 138 proviso (c), the complaint in question could not have been lawfully instituted against her as the pre-requisite for

instituting the complaint ceased to exist. Consequently, the order of summoning as well is held liable to be set aside.

18 The present petition is accordingly allowed. Complaint bearing No.NACT/10389 dated 31.03.2022, titled as 'M/S Stanvac Prime Private Limited Vs. Smt. Swati Motwani' filed under Section 138 of the Negotiable Instruments Act, 1881 and also the summoning order dated 31.03.2022 passed by the Judicial Magistrate First Class, Gurugram are set aside.

19 Pending misc. application(s), if any, shall also stand(s) disposed of accordingly.

January 27, 2026. **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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