

Jagmohan Singh v. Pardeep Aggarwal (P&H) : Law Finder Doc Id # 414143
PUNJAB AND HARYANA HIGH COURT

Before :- Vijender Singh Malik, J.

Crl. Misc. No. M-21691 of 2012. D/d. 4.12.2012.

Jagmohan Singh - Petitioner
Versus
Pardeep Aggarwal - Respondent

For the Petitioner :- Mr. Ashish Aggarwal, Advocate.

For the Respondent :- Mr. D.S. Gandhi, Advocate.

Negotiable Instruments Act, Section 138 - Dishonour of Cheque - Premature filing of complaint by one day - Complaint quashed - Provisions of Section 138 proviso is mandatory and not directory

(i) In this case notice demanding payment served 9.3.2012 - Period of 15 days to file complainant would commence from 10.3.2012 and would end on 24.3.2012 and the complaint could be filed only 25.3.2012 - Complaint is clearly pre-mature on 24.3.2012 - Complaint quashed.

[Para 5]

Cases Referred :

[Santosh Aggarwal v. Aushim Kapoor, 2011\(6\) RCR \(Criminal\) 2348.](#)

[Sandip Guha v. Saktipada Ghosh, 2009\(1\) AICLR 477.](#)

[Anil Kumar Shukla v. State of U.P., 2008\(3\) AICLR 465.](#)

JUDGMENT

Vijender Singh Malik, J. - Jagmohan Singh, the petitioner has brought this petition under the provisions of section 482 of the Code of Criminal Procedure, for quashing of Criminal complaint No. 5327 dated 24.03.2012 (Annexure P-1) and the summoning order dated 24.03.2012 (Annexure P-2) vide which the petitioner has been summoned to stand trial for an offence punishable under section 138 of the Negotiable Instruments Act, 1881, (for short the Act), by learned Judicial Magistrate Ist Class, Amritsar as also the subsequent proceedings arising therefrom.

2. Claiming that the accused took a friendly loan from the complainant in a sum of L 1,00,000/- and in discharge of that liability, he issued two cheques of L 50,000/- each bearing Nos. 427793 and 427794 dated 22.2.2012 and 25.02.2012 respectively, drawn on Punjab and Sindh Bank Ltd., Branch Bhagtawala, Amritsar, the respondent has submitted that he presented the cheques for encashment through his bank i.e. HDFC Bank, East

Mohan Nagar, Amritsar and was surprised when the cheques were received back dishonoured with remarks "Exceeds Arrangements" vide memo dated 27.02.2012. According to him, he served a legal notice to the accused dated 09.03.2012 through registered AD and despite service of the same, the accused failed to make the payment of the amount till the date of filing of the complaint.

3. Learned counsel for the petitioner drew my attention to Annexure P-2, the order dated 24.03.2012 passed by learned Judicial Magistrate Ist Class, Amritsar summoning Jagmohan Singh, the accused in the complaint to stand trial for an offence punishable under section [138](#) of the Act. He has further submitted that on receipt of the cheques dishonoured with memo dated 27.02.2012, a legal notice calling upon the accused to make the payment of the amount of the cheques was issued by registered AD on 09.03.2012. According to him, the complaint filed on 24.03.2012 is pre-mature.

4. Learned counsel for the petitioner drew my attention to section [138](#) of the Act where under proviso (c) the requirement is that drawer of such a cheque fails to make the payment of the said amount of money to the payee or to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

5. Learned counsel for the petitioner has further submitted that the period of fifteen days to make the payment commence from the day following the date of receipt of notice. According to him, here the notice has been sent on 09.03.2012 and even if it is presumed, though it is not so, that the notice reached the petitioner on 09.03.2012, the period of fifteen days would commence from 10.03.2012 and would end on 24.03.2012 and the complaint could be filed only 25.03.2012. He has further submitted that there is nothing to presume on the record that the legal notice reached the petitioner on 09.03.2012 and if it is taken that it reached the petitioner on 10.03.2012, the complaint is clearly pre-mature on 24.03.2012.

6. Learned counsel for the petitioner has cited before me three decisions in support of his submissions of three different Hon'ble High Courts. The first is ***Santosh Aggarwal v. Aushim Kapoor, 2011(6) RCR (Criminal) 2348***; the second is ***Sandip Guha v. Saktipada Ghosh and another, 2009(1) AICLR 477*** and the third is ***Anil Kumar Shukla v. State of U.P., 2008(3) AICLR 465***.

7. Learned counsel for the respondent has submitted that if the complaint is quashed, then it would give rise to other litigation. According to him, the petitioner could pay the amount in spite of the fact that the complaint was pre-mature. According to him, strict compliance with the proviso (c) of section [138](#) is not required because the provision is not mandatory.

8. It is true that if the complaint is quashed, the respondent would not be left with this remedy and would have to advert to the civil suit for recovery of the amount. However, the petition cannot be dismissed solely on this ground. The respondent may avail whatever remedy is available to him in the event of quashing of the complaint if that is the fate of this petition. In all the three decisions cited above, the complaint was filed before expiry of period of fifteen days from the date of receipt of notice by the accused and the complaints have been quashed being pre-mature. I do not find any reason to differ from the ratio of the aforesaid decisions. Moreover, I cannot agree with learned counsel for the respondent in his submission that the provision of section [138](#) proviso (c) is directory and not mandatory.

9. In these circumstances, I find the complaint to be premature and liable to be quashed. The petition is consequently allowed. The complaint, summoning order and the subsequent proceedings arising therefrom are quashed.

Petition allowed.

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