

(2008) 04 P&H CK 0164

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 3265-M of 2007 (O and M)

Gaurav Singh Rathore and
Another

APPELLANT

Vs

M/s. Tai-Pan Traders Ltd.

RESPONDENT

Date of Decision: April 2, 2008

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: Vinod K.Sharma, J

Bench: Single Bench

Advocate: Ajay Sharma, for the Appellant; S.S. Bawa, for the Respondent

Final Decision: Allowed

Judgement

Vinod K. Sharma, J.

The petitioners by way of this petition seek the quashing of the complaint titled as "M/s. Tai-Pan Traders Ltd. v. M/s. Sheba Sheets Pvt. Ltd." filed u/s 138 of the Negotiable Instruments Act, 1881, pending in the Court of Sh. M.D.S. Dhillon, JMJC, Chandigarh.

2. The respondents M/s. Tai-Pan Traders Ltd. had filed a complaint u/s 138 of the Negotiable Instruments Act, 1881 against the petitioners on the allegations that the complainant company paid a sum of Rs. 18,79,779/- (Rupees eighteen lacs seventy nine thousand seven hundred and seventy nine only) to M/s. G.E. Countryside Consumer Financial Service Ltd. on 05.12.2003. Another sum of Rs. 16.00.000/- (Rupees sixteen lacs only) was said to have been paid to ICICI Bank, New Delhi on 20.11.2003 and a sum of Rs. 7,00,000/- (Rupees seven lacs only) to Bank of Punjab Ltd., New Delhi on 26.09.2003 on behalf of the petitioners herein. It was claimed that complainant company paid a total sum of Rs. 40,19,779/- (Rupees forty lakh nineteen thousand seven hundred and seventy nine only) to different creditors of the accused on its behalf and, therefore, the accused were liable to repay the said

amount to them.

3. That M/s. Sheba Wheels Pvt. Ltd. is said to have issued ten postdated cheques in favour of the complainant as part payment against the amount paid by the complainant company to ICICI Bank and assured them that the said cheques would be encashed on their due presentation to the Bank.

4. Out of the said cheques the complainant company deposited a cheque of Rs. 1,60,000/- (Rupees one lakh and sixty thousand only) which was drawn on HDFC Bank Ltd., New Delhi but the same was dishonored on 03.03.2004 on ground of funds being insufficient. The memo from bank was received by the complainant on 06.03.2004.

5. The complainant served a legal notice on 25.03.2004 calling upon the petitioners to pay the amount within 15 days. On the failure of the petitioners to pay the said amount the impugned complaint was filed.

6. The Learned Counsel for the petitioners seek the quashing of the complaint as well as the summoning order and subsequent proceedings, firstly, on the plea that in the present case no statutory notice was issued to the petitioners and, therefore, the present complaint was not competent for want of a valid legal notice. In support of the contention reference was made to the notice issued by the respondent complainant which was relied upon by the complainant in his complaint. The operative part of the notice reads as under:-

Under the circumstances. I hereby call upon you through this notice to make the payment for a total sum of Rs. 39,19,779/- along with a sum of Rs. 2000/- as incidental charges including the cost of this legal notice within a period of fifteen days from the receipt of this notice, failing which my clients shall be constrained to file a criminal complaint against you in the competent court of jurisdiction at Chandigarh at your cost and responsibility which may please note-

A copy of this notice has been retained in my office for record and necessary action.

7. The contention of the Learned Counsel for the petitioners, therefore, was that dishonored cheque was for a sum of Rs. 1,60,000/- (Rupees one lakh and sixteen thousand only) and, therefore, this notice was not as per statute, as the petitioners should have called for the payment of amount qua the cheque which was dishonored. The notice issued could not be said to be therefore a valid notice.

8. The second contention raised by the Learned Counsel for the petitioners is that even if the averments made in the complaint are taken on their face value the present complaint is barred by limitation.

9. The contention of the Learned Counsel for the petitioners is that the cheque in the present case was returned on 03.03.2004 which was said to have been received by the complainant from the Bank on 06.03.2004, the legal notice calling upon the

petitioners to make the payment of Rs. 39,19,779/- along with a sum of Rs. 2000/- as incidental charges including the cost of the legal notice, was issued on 25.03.2004, whereas the present complaint was filed on 12.05.2004.

10. The Learned Counsel for the petitioners contends that in order to calculate the limitation for filing the complaint, the limitation is to commence from the date of receipt of notice by the drawer of the cheque and not from the date of receipt of acknowledgment of demand notice sent by the payee.

11. In support of this contention the Learned Counsel for the petitioners places reliance on the judgment of the Hon"ble Kamataka High Court in the case of [Srikanth P. Hutagee Vs. Gangahdar S. Hutagekar](#) .

12. The contention of the Learned Counsel for the petitioners therefore, is that in the present case complaint has been filed on the 50th day and, therefore, the complaint is barred by time.

13. The Learned Counsel for the petitioners contends that when the complaint is filed after the period of limitation prescribed the prosecution deserves to be quashed.

14. In support of this contention the Learned Counsel for the petitioners placed reliance on the judgment of the Hon"ble Andhra Pradesh High Court in the case of [Maruthi College Engineering and Technology and Another Vs. Mohd. Salahuddin Ghorri and Another](#), wherein the Hon"ble Andhra Pradesh High Court has been pleased to lay down as under:-

3. The Learned Counsel for the accused submitted that the cheque once bounced and after lapse of 15 days time of repayment of the amount, the limitation starts and complaint has to be filed within 30 days and as the complainant did not prefer the complaint within 30 days after the notice and the present complaint has been filed after the lapse of 30 days, therefore, barred by time and the petition in respect of Section 138 of the Act is liable to be quashed. In support of his contention a decision rendered in *Sadanandan Bhadrans v. Madhumti Sunil Kumar*, AIR 1998 SC 5043 wherein the Supreme Court held that a cheque can be presented any number of times during the period of its validity by payee. On each presentation of the cheque and its dishonour a fresh right, and not cause of action, accrues in his favour. He may, therefore, without taking peremptory action in exercise of his such right under Clause (b) of Section 138 of the Act. go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But, once he gives a notice under Clause (b) of Section 138 of the Act he forfeits such right for in case of failure of the drawer to pay the money Within the stipulated time he would be liable for the offence and the cause of action for filing the complaint will arise. Needless to say. the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of receipt of the notice by the drawer, expires.

4. The Learned Counsel for the respondent did not dispute the legal position. In view of the above Judgment of the Supreme Court, the prosecution in respect of Section 138 of the Act is liable to be quashed.

15. Keeping in view the fact that in the present case the notice issued cannot be said to be statutory notice as the amount demanded was much higher than the dishonored cheque and also keeping in view the fact that the present complaint was barred by limitation, this petition is allowed. The complaint and subsequent proceedings arising therefrom are ordered to be quashed.