

(2001) 10 P&amp;H CK 0181

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Miscellaneous No's. 12792-M of 1998 and 17762 of 2000

Rajinder Rathi

APPELLANT

Vs

Capsugel India Ltd. and Others

RESPONDENT

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**Date of Decision:** Oct. 17, 2001**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 138

**Citation:** (2003) 115 CompCas 358 : (2002) 1 RCR(Criminal) 510**Hon'ble Judges:** K.C. Gupta, J**Bench:** Single Bench**Advocate:** Tarun Jain, for the Appellant; S.S. Saron, for the Respondent**Final Decision:** Dismissed

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**Judgement**

K.C. Gupta, J.

This is a petition filed by the petitioners (accused) u/s 482, Cr.P.C. for quashing the complaint Annexure P-5 of 1997 filed u/s 138 of the Negotiable Instruments Act, 1881, and also the summoning order vide which they had been summoned under the aforesaid Act by the Judicial Magistrate 1st Class, Chandigarh.

2. Briefly stated, the facts are that M/s. Capsugel India Limited, respondent-complainant, manufactured empty gelatine capsules. Sh. Harinder Singh is a Commercial Manager of the said Company. He has been authorised by the Company to file a complaint by the Board of Directors. The petitioners (accused), who are the Executive Director and Managing Director respectively, purchased empty gelatine capsules from the respondent Company vide order dated 4.12.1996, which were supplied for the value of Rs. 1,54,752/- vide Invoice No. 479 dated 11.12.1996 and the term of payment was 60 days by post-dated cheque. The petitioners had sent a Cheque No.850939 dated 16.2.1997 drawn on Canara Bank, Abid Road, Hyderabad and the same was not presented for encashment by the

respondent as per instructions given by the petitioners from time-to-time. However, when the respondent presented the cheque for encashment, then it was dishonoured as there was not adequate balance in the account. The bankers, informed the respondent the cheque dated 16.2.1997 had been returned with the endorsement ("funds insufficient and recalled account"). Thereafter, the respondent requested the petitioners to make arrangement for the payment in respect of the material supplied but they did not make payment and ultimately it sent a legal notice through its Counsel on 12.8.1997 through courier on 13.8.1997, which was received by the petitioners on 14.3.1997. However, the petitioners did not make the payment within 15 days and after waiting for 15 days the present complaint was filed within one month.

3. After recording preliminary evidence, the petitioners were ordered to be summoned for 25.5.1998 vide Annexure P-6.

4. Against the filing of the complaint and order of summoning for 25.5.1998, the present petition u/s 482, Cr.P.C. was filed by the accused.

5. I have heard Ms. Tarun Jain, Counsel for the petitioners, Mr. S.S. Saron, Counsel for the respondent and carefully gone through the file.

6. Counsel for the petitioners contended that Prime Pharmatech (India) Ltd. has not been made a party to the complaint and, as such, the complaint was not maintainable against the Executive Director, petitioner No. 1 and Managing Director, petitioner No. 2 without impleading the Company as a party. For this contention, she placed reliance on *Tikam Chand Jain v. State Government of Haryana* through its Secretary, Excise and Taxation, Haryana, Chandigarh and Another 1987(2) PLR 151. On the other hand Counsel for the respondent contended that the said authority is not applicable to the facts of the present case because on the facts of the case, it was held that there was no provision for making the Managing Director personally liable for the recovery of the dues against the limited company. However, he contended that as per the authority of the Apex Court i.e. *Anil Hada V. Indian Acrylic Ltd.* (1999) 4 CCR 285 : (1999) 2 BC 138 : (1999) 10 SLT 487 : 2000 (1) RCR (Criminal) 1, the prosecution of the Company is not sine qua non for prosecution of other persons. Therefore, according to him Company was not necessarily to be arrayed as respondent to the complaint.

7. Counsel for the petitioners next contended that the complaint was time-barred inasmuch as the legal notice was received by the Company on 14.8.1997 and the complaint u/s 138 of the Negotiable Instruments Act was filed on 29.9.1997 which was barred by time. On the other hand, Counsel for the respondent contended that the complaint was very much in time in view of the authority of the Apex Court in [M/s. Saketh India Limited and others Vs. M/s. India Securities Limited](#), in which it was held as under :

"Where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded; the effect of defining the period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. This rule has been consistently followed and has been adopted in the General Clauses Act and the Limitation Act. Applying the said rule, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer expires. The notice of bouncing of the cheque having been served on the drawer on 29.9.1995, the period of 15 days in the present case expired on 14.10.1995. So cause of action for filing complaint would arise from 15.10.1995. That day (15th October) is to be excluded for counting the period of one month. Therefore, the complaint filed on 15.11.1995 is within time."

8. In my opinion, the contention of learned Counsel for the petitioners is not tenable and the complaint filed is very much in time. It was admitted by the petitioners in para 9 of the petition that on 12.8.1997, a legal notice was sent by the respondent to the petitioners and Company which was received by it on 14.8.1997 and the respondent had filed the complaint u/s 138 of the Negotiable Instruments Act after 29.9.1997. Since the notice was received by the petitioners and Company on 14.8.1997, so the period of 15 days would expire on 29.8.1997. As such, cause of action for filing the complaint would arise from the next date i.e. 30.8.1997. That day i.e. 30.8.1997 is to be excluded for counting the period of one month. The complaint in the present case was filed on 29.9.1997. Therefore, the complaint filed on 29.9.1997 is within time as per the judgment referred above. Hence, the contention of the learned Counsel that the complaint was time-barred is of no avail.

9. Counsel for the petitioners also contended that there were certain defects in the goods despatched and further the goods were of sub-standard quality. These disputed facts cannot be gone into u/s 482, Cr.P.C. because it is the function of the trial Magistrate. Thus, there is nothing on file to exercise the jurisdiction u/s 482, Cr.P.C. for quashing the complaint as well as summoning order.

10. Consequently, the petition u/s 482, Cr.P.C. is dismissed.