IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-AS-338-2022
Reserved on : 21.10.2022
Pronounced on :07.11.2022

The Haryana State Cooperative Supply and Marketing Federation Ltd.
.....Appellant(s)

VERSUS

M/s Hanuman Rice Mill and another ..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Pawan Girdhar and Mr. Manav Bajaj, Advocates
for the appellant

Mr. Parminder Singh, Advocate for the respondents

AMAN CHAUDHARY, J.

Instant criminal appeal emanates from the judgment dated 15.9.2014 passed by the Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhri, vide which complaint No. 50 dated 19.10.2012, filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), was dismissed.

FACTUAL MATRIX

Briefly put, the averments made in the complaint filed by the complainant-appellant were that 47322 quintals and 80 kgs of paddy was supplied for custom milling to the respondents, in terms of an agreement dated 18.11.2009, entered into between the parties. It was averred that on having lifting the same from the Sheller, it was found short of 6738 qnts. 2

kgs, alongwith some tarpaulins and wooden crates. The total loss came down to be calculated amounting to Rs.78,00,800/-. It was further averred in the complaint that in discharge of the same existing part liability the respondent issued a cheque bearing No. 068821 dated 2.6.2010, for a sum of Rs.50 lakhs, drawn on the State Bank of India Jagadhari, which on presentation on 27.9.2010, came to be dishonoured vide memo of the even date with the remarks "funds insufficient". The cheque was again presented on 6.10.2010, which was returned as dishonored vide memo of even date with the remarks "funds insufficient". Thereafter, a legal notice dated 20.10.2010, was sent on 21.10.2010 to the respondents, to make the requisite payment within 15 days. However, due to non-payment of the amount, the complaint was filed by the appellant on 3.11.2010, wherein the respondents were summoned by the trial Court vide order of even date, to face the trial.

In order to prove his complaint, the complainant got examined Rajvir Singh DM, Hafed, Yamunanagar as CW1, Dharampal as CW2, and stated regarding serving the legal notice and Suresh Kumar, Clerk, SBI as CW3, and proved in his evidence the certified copy of cheque return register as Ex.CW3/A, statement of account as Ex.CW3/B and his authority letter as Ex.CW3/C.

Upon closure of the evidence of the complainant, the statement of the accused was recorded under Section 313 Cr.P.C. wherein she had stated that one undated blank cheque had already been taken by the complainant from her as security alongwith FDR of Rs.3 lakh, at the time

when agreement was entered into and the said cheque had been misused by the complainant, as there was no outstanding amount towards the complainant. In defence, the accused examined, Hari Om Clerk, office of Deputy Commissioner, Yamunanagar appeared as DW1, who proved Ex.D1 to Ex.D9, Rishi Raj Sharma, Sanction Officer of Hafed, as DW2, who proved in his evidence, the statement of account pertaining to dealings between the parties Ex.D10 to D22, Ashok Gupta, Assistant from the office of Hafed, Yamunanagar, as DW3, who proved in his evidence documents Ex.D23 and Ex.D24, regarding filing of counter claim by the accused respondents for which arbitration proceedings were pending, Jora Singh, Advocate as DW4, who proved in his evidence notice dated 17.8.2010 sent by him on behalf of the complainant to the accused-respondents appeared as Ex.D4, DS Panejta, Advocate as DW5, Shamsher Singh Kamboj, as DW6 (inadvertently written as DW3), who proved that he had attested the documents Ex.D25 and Ex.D26, and Devender Prasad, Forensic Documents Expert, as DW7, who tendered his report in evidence as Ex.DW7/A and photographic charts as Ex.DW7/B to Ex.DW7/G that the date on memo had been altered and cheque in question has been forged by filling up the date afterwards. Thereafter, the defence evidence was closed by Court order.

On evaluating the evidence on record produced by the parties and having heard the learned counsel, the trial Court vide the impugned judgment dismissed the complaint and acquitted the accused of the charge.

Discontented, the complainant-appellant has preferred the present appeal.

SUBMISSIONS

Learned counsel for the appellant submitted that the trial Court had committed grave error in dismissing the complaint and acquitting the accused without properly appreciating the evidence led by the complainant. One of the grounds for dismissing the complaint was that, the complaint having been filed on the 14th day was premature. In this regard, he submitted that this premise was incorrect inasmuch as, once the cognizance of the complaint had been taken on the same very day, the complaint could not have been held to be pre-mature. The learned trial Court adopted a hyper technical approach while dismissing the complaint on such basis. Learned counsel further submits that the learned Court had wrongly held the complaint had not been filed by an authorised person. In this regard, his submission is that the complaint having been filed by the District Manager at his hands, being an officer of the Corporation, required no further authorisation. Further the ground for the acquittal of the respondents was that there was no documentary proof that had been produced by the complainant, with regard to the quantity of the paddy which had been supplied to the respondents. In this context, he submits that in terms of the agreement, total quantity of paddy supplied was 47322.80 quintal, but the respondents had failed to return the same, upon which, the complainant was forced to lift the same from the Sheller, whereafter, it was found short of 6738.2 quintals. Therefore, there was no requirement of any other proof of producing account books etc, and this could not have made a ground for acquittal. Besides the aforesaid, he submitted that in the testimonies of the witnesses of the Corporation a specific reference to the paddy having been

supplied to the respondents for custom milling in the records of Corporation was made. The trial Court had also found that the cheque which, had been dishonoured did not bear a date. In that regard, learned counsel submits that though the complaint was accompanied by photocopy of the cheque that did not bear the date, however it is his submission that the original cheque having the date 02.06.2010, was subsequently produced at the time evidence. However, the trial Court had wrongly relied upon the photocopy of the cheque instead of the original cheque which bore the date.

Learned counsel for the complainant-appellant submits that on yet another erroneous ground on which the trial Court had acquitted the respondents, that the cheque return memo in original, was to be accompanied with the complaint, but was not filed whereas the photocopies were available on the record. With regard to that the trial Court wrongly gave a finding on the basis that the defence witnesses had investigated and enquired into the matter that even the said memo was forged.

Furthermore, he submitted that what weighed with the learned trial Court was the assertion of the accused-respondents that the cheque was given by way of security and not in discharge of a legally enforceable debt. In this regard, learned counsel had submitted that there is no evidence led by the respondents to the effect that the cheque, as a matter of fact, was given by way of security. He further submits that in the agreement though there was a mention of a cheque to be given as security, however it was not proved as to whether this was the cheque that had been given by way of security. He also submitted that no document or communication had been

produced by the respondents that the cheque in question was issued by them stipulating a condition thereto that it was for the purpose of security. He reiterated that the cheque that got dishonoured was for discharge of a legally enforceable debt and the once the signatures were not denied, the presumption under Section 139 of the Act got attracted. He had stated that he, thus rests his case.

Contrarily, learned counsel for the respondents submitted that the trail Court has rightly acquitted the respondents on the ground that the complaint itself was premature, having been filed on the 14th day. The factum of taking the cognizance on the same very day would not, *ipso facto* make the complaint maintainable. In this regard, reliance is placed on the judgment of Hon'ble The Supreme Court of India in the case of **"Indra Kumar Patodia & another vs. Reliance Industries Ltd. &Ors."** reported as **(2012) 13 SCC 1**.

Learned counsel for the respondents further submitted that insofar as the complaint not having been filed by an authorised person, the Court had rightly come to the conclusion in that regard. Still further, no record had been produced by the complainant with regard to the quantity of the paddy supplied or received after milling of the same to prove any shortfall. He further submitted that with regard to the undated cheque and there being interpolation on the return memo, respondents had got the documents examined from a handwriting expert, who had given his report Ex. DW7/A, as per which '1/10/U' was converted into '6/10/U' in the memo Ex.C-2. He further submitted that the respondents had examined the Clerk

from the office of the Deputy Commissioner wherein an agreement was signed and the undated security cheque had been submitted Ex.D-1. In that regard, he submitted that the security cheque submitted alongwith the agreement, was one of the same as that which is stated to have been dishonoured. In order to further substantiate his aforesaid argument, the learned counsel for the respondents made a reference to the legal notice dated 17.8.2010, Ex.D4, sent by the complainant-Federation to the respondents, wherein it was specifically mentioned that the security cheque, which was lying undated with it, had been dishonoured.

Learned counsel for the respondents submits that the record that was got produced through the employee of the organization, who appeared as DW2. The other reason for the cheque to be given as security also emanates from the fact that no date or amount was mentioned in same. Had it been for a discharge legally of a enforceable debt, the cheque would have not been undated but would have surely had the date mentioned and the office of the Deputy Commissioner, wherein the agreement is stated to have been signed alongwith which the said security cheque had been submitted, had also confirmed that it was given by way a security and not in discharge of a legally enforceable debt.

Learned counsel for the complainant-appellant in rebuttal submits that under no circumstances, a undated and unfilled cheque would have been given as a security, in view of the Clause 12(II) of the agreement, which specifies the amount of Rs.25,00,000/- for each ton of milling.

Heard the arguments advanced by the learned counsel for the parties at length.

ANALYSIS

It may be accentuated, at the outset, that the complaint was filed on 3.11.2010 and on the same day, the Court took cognizance thereof, recorded the preliminary evidence of the complainant, that led to the issuance of the summoning order. The trial Court found the complaint to be pre-mature inasmuch as in view of the legal notice dated 20.10.2020 sent by the complainant on 21.10.2010 through registered post, the period of 15 days would have expired on 4.11.2010, however, the complaint had been filed a day prior thereto. That in order to prove the complaint, the complainant had got examined Rajvir Singh DM Hafed, as CW1, who in his cross-examination stated that he had seen Ex.C1, which happens to be the photocopy of the cheque, which was filed by the complainant at the time of filing of the complaint. He also admitted the fact that on the photocopy of the cheque Ex.C1, no date had been mentioned. He stated that he does not know anything about the original memo. He further stated that he has no authority letter from Hafed, Panchkula, authorising him to file the complaint. He further stated that though no resolution had been passed in his favour to file the complaint, but he was empowered to do so. He had further stated that he had filed a complaint on behalf of the Hafed, Yamuna Nagar as he was working on the post of District Manager, Hafed, Yamuna Nagar.

In her statement recorded under Section 313 Cr.P.C., respondent had stated that an agreement had been entered into between her and the complainant in the year 2009-2010 and at that time the complainant

had taken a FDR of Rs.3 lakh alongwith one undated cheque from her as security, which she had stated was misused, besides submitting that there was no amount outstanding against her. She had also stated that the return memo was also forged and fabricated and the complainant instead of contesting the arbitration proceedings already pending between the parties, had filed this present complaint.

DW1, Hari Om, Clerk from the office of Deputy Commissioner, Yamuna Nagar had proved the documents Ex.D1 (undated cheque No.068821) to D9.

Similarly, DW2, Rishi Raj Sharma, Section Officer, in the office of Hafed, in his statement had proved the account statement as D-10 to D-22, pertaining to the dealings between the parties.

DW3, Ashok Gupta, Assistant, from office of Hafed proved Ex.D23 to D24, wherefrom he proved the fact that the counter claim had been filed by the respondents against the complainant for which the arbitration proceedings were pending.

DW4 Jora Singh Advocate, had proved in his evidence, the notice dated 17.8.2010, Ex.D4, sent by the complainant to the accused-respondents.

The Forensic Expert, DW7 Devendra Prasad, gave his opinion, Ex.DW-7/A, which reads thus:-

> "From the cumulative effect of the observations and reasons, the opinion is as under:
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> Opinion:
> (I) The date reading '2-6-2010' appearing on the original cheque Ex.C-1 (Exhibited on 3.2.13) has

been written subsequent to the Exhibition of the two Photostat copies of this cheque on the case file, which amounts to material alteration in the original cheque i.e., the original cheque Ex.C-1 (exhibited on 3.2.13) is an altered document in its present state qua its Photostat copies Ex.C-1 (Exhibited on 3.11.2010) and Ex.D-1 (Exhibited on 23.10.13) on the case file.

(II) The original date appearing in the red encircled portion mark 'B' of memo Ex. C-2 was written as '1/10/U', which has been converted and altered into the present date reading '6/10/U' by way of after addition."

The trial Court while dismissing the complaint being premature has observed as under:-

"21. In the present case the legal notice was sent by complainant to accused on 20-10-2010 through registered letter, postal receipts of which are dated 21-10-2010 which are Ex.C4 and Ex.C5. Even if the contention of the complainant (though not proved) are considered to be true to the effect that legal notice was sent by complainant to the accused on 20-10-2010 by hand still the complainant was under a legal obligation to have waited for 15 days i.e. till 4-11-2010 before filing the present complaint. The complaint in hand was however filed by complainant on 3-11-2010 and learned predecessor of this court took cognizance on the complaint on 3-11-2010 itself and preliminary evidence of complainant was recorded and closed on the same day and summoning order was also passed against accused on the same very day. This being the case when the complaint in hand happens to be a case of premature filing and since an important and a major ingredient of the offence in question is not being fulfilled the complaint in hand deserves to be dismissed.

22. At this state I place reliance upon judgment of Hon'ble Punjab and Haryana High Court in case titled as **Jagmohan Singh v. Pardeep Aggarwal Crl. Misc. no.M-21691 of 2010 DOD 4-12 2012** wherein premature filing of complaint by one day met with the fate of complaint being quashed by Hon'ble Punjab and Haryana High Court.

23. However, learned learned counsel for the complainant has placed reliance upon judgment of Hon'ble Supreme Court of India in case titled as

Narsingh Dass Tapadia v. Goverdhan Dass Partani 2000(2) CCC 408 wherein it has been held by Hon'ble Supreme Court of India that where complaint u/s 138 of the Act is premature, the complaint can either await maturity or be returned to the complainant for filing later and complaint cannot be dismissed for the reasons that it was presented at an earlier date. He has also placed reliance upon judgment of Hon'ble Uttrakhand High Court in case titled as **Ram Prasad Dangwal v. State of Uttrakhand 2010(2) CCC 105** to press his point to that effect. However, this court has perused the said judgments and would humbly like to state that law laid down by Hon'ble Apex Court in the judgment of Hon'ble Supreme Court of India in case titled as **Narsingh DassTapadia (supra)** happens to be law which is not applicable to the fact of the present case because case titled as **Narsingh Dass Tapadia (supra)** happens to be a case where though filing took place prematurely, but cognizance was taken by magistrate by recording preliminary evidence and passing summoning order on the later date when case was no longer a premature case. It was under these circumstances that Hon'ble Apex Court has held that mere filing of complaint prematurely does not entitle dismissal of complaint and prematurity has to be seen on the date on which cognizance is taken by magistrate which happens to be a date on which magistrate applies his mind by getting preliminary evidence recorded and by passing the summoning order. At this stage I would like to place reliance upon judgment of Hon'ble Allahabad High Court in case titled as **Lakhan Singh v. State of UP 2013(3) CRI.C.C. 752** wherein it has been held by Hon'ble Allahabad High Court while dealing with judgment of Hon'ble Apex Court in case titled as **Narsingh Dass Tapadia (supra)** that where cognizance was taken prematurely the acquittal of accused on the ground of premature complaint and cognizance having been taken prematurely was upheld. As such this court is of the view that in the present case since the complaint has been filed prematurely and since an important ingredient of the offence in question is not being fulfilled the complaint in hand deserves to be dismissed."

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From the foregoing, it emerges that:-

Firstly; neither any Resolution nor any authority was produced on record authorising to file the complaint in question, which fact had also been admitted by the complainant CW1;

Secondly; the complainant had filed photocopy of the dishonoured cheque bearing No. 068821 as Ex.C1, amounting to Rs.50,00,000/-, which bears no date, which he in his cross-examination admitted was undated, however, in the same breath, he had stated that when he had received it, the cheque was filled and was dated, perhaps the date was 2.6.2010;

Thirdly; the respondent also placed on record the same cheque Ex.D1, bearing No.068821, amounting to Rs.50,00,000/-, given by way of security, but bearing no date, which was also proved by official from the Office of Deputy Commissioner, Yamunanagar, who stated that the original of it was not available with them but the photocopy was available in their record, which had been attested by them, this in itself creates a doubt and the possibility of misuse of the security cheque given by the respondent cannot be ruled out;

Fourthly**;** it is apparent from Clause 12(ii) of para 7 of the agreement, Ex.D21, entered into between the parties, that in addition to the security, the miller/ second party agrees to provide additional guarantee in the shape of signed cheque drawn in favour of Hafed @ Rs.25 lakh each ton milling capacity and the second party is bound to not cancel /alter the cheque without prior consent of the Hafed;

Fifthly; in clause 13 of the agreement, it was mentioned that the security would be forfeited after granting due opportunity in case the Miller/ second

party fails or neglects to observe or perform any of his obligation under the contract, it shall be lawful for the Hafed/Agency to forfeit the security after granting due opportunity and the losses caused to the State exchequer shall be recoverable as arrears of land revenue from the Miller/ second party / sureties. In addition, such Miller and his Mill premises shall be liable to be black listed for future**.** However, it was not mentioned in the aforesaid clause that the signed cheques as additional guarantee had to be dated/post-dated, or that in case of default or violation of the terms and conditions of the agreement, the same would be presented to recover the loss, if any, rather the clause provided that the loss would be recovered as arrears of land revenue;

Sixthly; the cheque was presented on 27.9.2010, which was dishonoured on the same date, however, no notice thereupon was sent, for which there was no explanation by the complainant, the same cheque was again presented on 6.10.2010, which was again returned vide memo of the even date, only whereafter, legal notice dated 20.10.2010 (Ex.C3) was sent on 21.10.2010. A perusal of the aforesaid legal notice shows that the complainant had made significant improvements upon the previous notice dated 17.8.2010 (Ex.D4), which was sent to the respondents by the complainant-Federation, as proved by DW4 Jora Singh, Advocate, wherein in para 7 it was mentioned that cheque bearing no. 062281 amounting to Rs.50,00,000/- was given as security/guarantee at the time of agreement but no date of the cheque was mentioned, and that the FDR and the cheque submitted at the time of agreement will be encashed to recover the loss and respondents were

directed to deposit the balance amount in the office within 10 days, failing which the Federation shall be constraint to take legal action in the competent Court of law, whereas, in para 2 of the legal notice dated 20.10.2010 (Ex.C3), it was mentioned that the cheque bearing no. 062281 amounting to Rs.50,00,000/- dated 2.6.2010, was issued for existing liability;

Seventhly*;* the complainant failed to produce the accounts books to prove the ingredient of legally enforceable debt, as such adverse inference has to be drawn against it, more particularly in view of the fact that it was the respondents who got the said account statements produced through the DW2-Section Officer from the office of the complainant himself as Ex.D10 to D-22;

Eighthly; the record of supply of paddy to the respondents has also not been produced by the complainant, who in his cross-examination also stated that he does not know how much paddy was supplied. On the other hand, respondents had examined to prove through the employee of the office of the complainant-appellant i.e. DW2 and the statements of accounts Ex.D10 to D-20, that the amount mentioned in the cheque was not outstanding against the respondents on the date of cheque, which creates a dent in the version as put forth by the complainant;

Ninthly*;* the original memo showing dishonour of cheque on 6.10.2010 was also not produced by the complainant and in his cross-examination he had admitted not being in possession thereof and CW3, the Bank Official had stated that cheque in question had never been dishonoured on 6.10.2010, which was also apparent from the cheque return register Ex.CW3/A and

statement of accounts Ex.CW3/B. Even the handwriting expert, DW7, as produced by the respondents, in his report had mentioned that on the return memo, Ex.C2, the date had been converted and altered from 1/10/U to 6/10/U. In view of the same, the case of dishonour of cheque on 6.10.2010 was not proved and since the complainant never sought permission of the Court to prove the photocopy of return memo Ex.C2 by way of secondary evidence, it was also not proved despite presumption under Section 146 of the Act to that effect, which stood rebutted. Last but not the least, the complaint was filed on 3.11.2010, i.e. a day prior to completion of 15 days from the date of legal notice was held to be premature.

CONCLUSION

A reference is made to the judgment of Hon'ble The Supreme Court of India, pertinent to the issue involved. In the case of **M.S. Narayana Menon @ Many vs. State of Kerala and another** (2006) 6 SCC 39, wherein the issue with regard to adverse inference to be drawn in case complainant does not produce accounts book and the stand of the accused was that the cheque in question had been issued by way of security, it was held as under:-

> **"37**. What would be the effect of a presumption and the nature thereof fell for consideration before a Full Bench of the Andhra Pradesh High Court in G. Vasu v. Syed Yaseen Sifuddin Quadri [AIR 1987 AP 139]. In an instructive judgment, Rao, J. (as His Lordship then was) speaking for the Full Bench noticed various provisions of the Evidence Act as also a large number of case laws and authorities in opining: "From the aforesaid authorities, we hold that once the defendant adduces evidence to the satisfaction of the Court that on a preponderance of probabilities there is no consideration in the manner pleaded in the plaint or suit notice or the plaintiff's evidence, the burden shifts to the plaintiff and the

presumption 'disappears' and does not haunt the defendant any longer." It was further held: "For the aforesaid reasons, we are of the view that where, in a suit on a promissory note, the case of the defendant as to the circumstances under which the promissory note was executed is not accepted, it is open to the defendant to prove that the case set up by the plaintiff on the basis of the recitals in the promissory note, or the case set up in suit notice or in the plaint is not true and rebut the presumption under S. 118 by showing a preponderance of probabilities in his favour and against the plaintiff. He need not lead evidence on all conceivable modes of consideration for establishing that the promissory note is not supported by any consideration whatsoever. The words 'until the contrary is proved' in S. 118 do not mean that the defendant must necessarily show that the document is not supported by any form of consideration, but the defendant has the option to ask the Court to consider the non-existence of consideration so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that consideration did not exist. Though the evidential burden is initially placed on the defendant by virtue of S. 118 it can be rebutted by the defendant by showing a preponderance of probabilities that such consideration as stated in the pronote, or in the suit notice or in the plaint does not exist and once the presumption is so rebutted, the said presumption 'disappears'. For the purpose of rebutting the initial evidential burden, the defendant can rely on direct evidence or circumstantial evidence or on presumptions of law or fact. Once such convincing rebuttal evidence is adduced and accepted by the Court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the plaintiff who has also the legal burden. Thereafter, the presumption under S. 118 does not again come to the plaintiff's rescue. Once both parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance."

38. If for the purpose of a civil litigation, the defendant may not adduce any evidence to discharge the initial burden placed on him, a 'fortiori' even an accused need not enter into the witness box and examine other witnesses in support of his defence. He, it will bear repetition to state, need not disprove the prosecution case in its entirety as has been held by the High Court."

Adverting to the facts of the case at hand, indubitably, the complainant miserably failed to prove the ingredients of Section 138 of the Act and this Court finds itself hard pressed to give credence to the averments made in the complaint, particularly in absence of any compelling evidence to substantiate the same and it being shrouded by elements of doubt, whereas, there being ample evidence adduced by the respondents to dislodge the claim made by the complainant, which came to be properly appreciated by the trial Court.

Hon'ble The Supreme Court of India in the case of **P.Mohanraj and others vs. M/s Shah Brothers Ispat Pvt. Ltd.,** (2021) 6 SCC 258 observed "Further, the language of Section 142(1)(b) of the Act shows the hybrid nature of these provisions inasmuch as a complaint must be made within one month of the date on which the "cause of action" under Clause(c) of the proviso to Section 138 arises. The expression "cause of action" is a foreigner to criminal jurisprudence**."** It was further observed "Under Section 144 of the Act, the mode of service of summons is done as in civil cases, eschewing the mode contained in Sections 62 to 64 Cr.P.C. Likewise, under Section 145, evidence is to be given by the complainant on affidavit, as it is given in civil proceedings, notwithstanding anything contained in the Cr.P.C.. Most importantly, by Section 147, the offences under this Act are compoundable without any intervention of the Court, as is required by Section 320(2) Cr.P.C." It was further held "clearly, given the hybrid nature of a civil contempt proceedings, described as "quasi-criminal" by several judgments of this Court, there is nothing wrong with the same

application "quasi-criminal" being applied to a Section 138 proceedings for the reasons given by us on an analysis of Chapter XVII of the Negotiable Instruments Act."

Further, Hon'ble The Supreme Court of India in the case of **Sarav Investment & Financial Consultancy Private Limited and another vs. Llyods, Register of Shipping, India Officer, Staff Provident Fund and another,** (2007) 13 SCC 753, held that "Section 138 of the Act contains a penal provision. It is a special Statute. It creates vicarious liability. Even the burden of proof to some extent is on the accused. Having regard to the purport of the said provision as also in view of the fact that it provides for a severe penalty, the provision warrants a strict construction. Proviso appended to Section 138 contains a non obstante clause. It provides that nothing contained in the main provision shall apply unless the requirements prescribed therein are complied with". It was further held "Clause (c), provides that the holder of the cheque must be given an opportunity to pay the amount in question within 15 days of the receipt of the said notice."

Gauging the contentions advanced by the respective counsel with regard to the issue of maintainability of the complaint, it having been filed on the 14th day and the cognizance having been taken on the same day, it is imperative to recapitulate the settled proposition of law, as elucidately interpreted by Hon'ble The Supreme Court of India, in a judgement rendered in the case of **Gajanand Burange vs. Laxmi Chand Goyal,** Criminal Appeal No.1229 of 2022, decided on 12.8.2022, while relying on

the three Judge Bench decision of the Hon'ble Supreme Court of India **Yogendra Pratap Singh vs. Savitri Pandey** and another reported as (2014) 10 SCC 713. Paras relevant in the judgment of **Gajanand Burange (supra)** as relevant to this case read thus:

> "5. The issue which is raised in this appeal is no longer res integra and is covered by a three-Judge bench decision of this Court in Yogendra Pratap Singh v Savitri Pandey and Another (2014) 10 SCC 713**.** Two issues were formulated for decision before the three-Judge Bench, which were:
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> > "1.1. (i) Can cognizance of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 be taken on the basis of a complaint filed before the expiry of the period of 15 days stipulated in the notice required to be served upon the drawer of the cheque in terms of Section 138(c) of the Act aforementioned? And,
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> > 1.2. (ii) If answer to Question 1 is in the negative, can the complainant be permitted to present the complaint again notwithstanding the fact that the period of one month stipulated under Section 142(b) for the filing of such a complaint has expired?"
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> 6. The first issue was resolved by paragraph 35 of the judgment, which is extracted below:
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> > "35. Can an offence under Section 138 of the NI Act be said to have been committed when the period provided in clause (c) of the proviso has not expired? Section 2(d) of the Code defines "complaint". According to this definition, complaint means any allegation made orally or in writing to a Magistrate with a view to taking his action against a person who has committed an offence. Commission of an offence is a sine qua non for filing a complaint and for taking cognizance of such offence. A bare reading of the provision contained in clause (c) of the proviso makes it clear that no complaint can be filed for an offence under Section 138 of the NI Act unless the period of 15 days has elapsed. Any complaint filed before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint at all in the eye of the law. It is not the question of prematurity of the complaint where it is filed before the expiry of 15 days from the date on which notice has been

> served on him, it is no complaint at all under law. As a matter of fact, Section 142 of the NI Act, inter alia, creates a legal bar on the court from taking cognizance of an offence under Section 138 except upon a written complaint. Since a complaint filed under Section 138 of the NI Act before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint in the eye of the law, obviously, no cognizance of an offence can be taken on the basis of such complaint. Merely because at the time of taking cognizance by the court, the period of 15 days has expired from the date on which notice has been served on the drawer/accused, the court is not clothed with the jurisdiction to take cognizance of an offence under Section 138 on a complaint filed before the expiry of 15 days from the date of receipt of notice by the drawer of the cheque."
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> 7. In the present case, while the notice was received by the appellant on 8 November 2005, the complaint was filed before the period of fifteen days was complete. The complaint could have been filed only after 23 November 2005, but was filed on 22 November 2005. In view of the legal bar which is created by Section 142 of the NI Act, as explained in the three-Judge Bench decision of this Court, taking of cognizance by the Court was contrary to the law and the complaint was not maintainable before the expiry of the period of fifteen days from the date of its receipt by the appellant."

The trial court in para 23 of impugned judgment in this case, had noticed that the complainant had relied upon the judgment in the case of **Narsingh Dass Tapadia vs. Goverdhan Dass Partani** (2000) 7 SCC 183, which Hon'ble The Supreme Court of India in the case of **Yogendra Pratap Singh** (supra) had overruled. The para as relevant, reads thus;

> 37. We, therefore, do not approve the view taken by this Court in Narsingh Das **Tapadia1 and so also the judgments of various High Courts following Narsingh Das Tapadia1** that if the complaint under Section 138 is filed before expiry of 15 days from the date on which notice has been served on the drawer/accused the same is premature and if on the date of taking cognizance a period of 15 days from the date of service of notice on

> the drawer/accused has expired, such complaint was legally maintainable and, hence, the same is overruled.."

It is thus, observed that the trial Court had rightly held the complaint to be not maintainable, it being pre-mature, having been filed on 3.11.2010 i.e. 14th day, an important condition of provision of Section 138 of the Act, incontrovertibly was not met.

Having considered all aspects of the present case and this Court having implored itself with abounding pronouncements as afore referred, this Court finds no illegality or perversity warranting interference in the well-reasoned judgment passed by the trial Court, as impugned in the present case. Consequently, and as a sequel thereto, the criminal appeal being bereft of merit, is dismissed.

7.11.2022 **(AMAN CHAUDHARY)**
gsv **JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No