A.F.R.
Judgment reserved on. 29.10.2026
Judgment delivered on. 02.11.2026
Neutral Citation No. - 2026:AHC:227186

Court No. - 78

Case :- APPLICATION U/S 482 No.39950 of 2017

Applicant(s):- Arun Gautam
Opposite Party(s) :- State of UP and Another
Counsel for Applicant(s) :- PK Singh
Counsel for Opposite Party(s) :- Chheda Lal Verma, G.A.

Hon'ble Sandeep Jain, J.

1. The instant application under Section 482 Cr.P.C. has been filed seeking the following relief:

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the instant application and quash the entire proceedings of Complaint Case No. 3621 of 2016, Amit Kumar Tripathi vs. Arun Gautam, under Section 138 of the Negotiable Instruments Act, pending before the learned Additional Chief Metropolitan Magistrate, Court No. 2, Kanpur Nagar, including the summoning order dated 10.05.2016 passed by the learned court below, failing which the applicant shall suffer irreparable loss and injury."

2. The factual matrix of the case is that the complainant, respondent No. 2, Amit Kumar Tripathi, and the accused-applicant, Arun Gautam, were well acquainted with each other and having cordial relations. Since the accused-applicant was in need of Rs. 2,50,000/- for his business, he approached the complainant in July 2014 and requested a loan of the aforesaid amount. The complainant allegedly advanced the amount to the accused-applicant in instalments, a sum of Rs.1.25 lacs was given on different dates in instalments and a sum of Rs. 1,25,000/- was paid on 31.07.2014 through NEFT from his ICICI Bank account.

3. It is the case of the complainant that the aforesaid amount of Rs. 2,50,000/- was advanced to the accused-applicant as an interest-free loan, with the assurance that the same would be repaid within three

months. However, the accused-applicant failed to honour his commitment.

4. On 15.10.2014, when the complainant demanded repayment of the aforesaid amount, the accused-applicant issued Cheque No. 001295 dated 15.10.2014 for Rs. 1,00,000/-, drawn on Axis Bank Limited, Kakadeo, Kanpur Nagar. The accused-applicant requested the complainant not to present the cheque for encashment, stating that the requisite funds were not available in his bank account and assuring him that he woulA.F.R.d inform the complainant once sufficient funds had been arranged.

5. The complainant waited for the accused-applicant to provide the requisite information. However, when no such information was received, the complainant contacted the accused-applicant, who stated that he had suffered losses in his business but would repay the amount shortly. Since the aforesaid cheque was not presented for encashment within its validity period, it became invalid for presentation.

6. Thereafter, the complainant again approached the accused-applicant, who issued Cheque No. 462111 dated 23.02.2016 for Rs. 1,50,000/-, drawn on ING Vysya Bank Limited, Kanpur Branch, and assured the complainant that sufficient funds were available in his bank account. He further assured the complainant that the remaining amount of Rs. 1,00,000/- would be repaid shortly.

7. Relying upon the assurance given by the accused-applicant, the complainant presented the aforesaid cheque for encashment. However, the cheque was returned unpaid on 26.02.2016 with the endorsement “kindly contact drawer”. The complainant again contacted the accused-applicant, who advised him to present the cheque once more. Accordingly, the complainant re-presented the

cheque, but it was again returned unpaid on 11.03.2016 with the same endorsement.

8. Thereafter, the accused-applicant once again requested the complainant to present the cheque after March 2016, assuring him that it would be honoured. However, upon its subsequent presentation, the cheque was again returned unpaid on 06.04.2016 with the endorsement “kindly contact drawer”.

9. Consequently, the complainant, through his counsel, Sri Sudhir Kumar Awasthi, issued a legal notice dated 20.04.2016 by registered post. However, the accused-applicant allegedly refused to accept the notice, which was accordingly returned undelivered.

10. In the aforesaid background, the complainant instituted Complaint Case No. 3621 of 2016 before the court of the learned Additional Chief Metropolitan Magistrate, Kanpur Nagar, on 02.05.2016. In support of the complaint, the complainant filed his affidavit in evidence under Section 200 Cr.P.C. and produced the original cheque, bank return memo, copy of the legal notice, postal receipt and other relevant documents.

11. Upon consideration of the material available on record, the learned Additional Chief Metropolitan Magistrate, Court No. 1, Kanpur Nagar, vide order dated 10.05.2016, concluded that a prima facie case under Section 138 of the Negotiable Instruments Act, 1881, was made out against the accused-applicant and accordingly summoned him to face trial for offence under Section 138 of the Negotiable Instruments Act,1881. The aforesaid summoning order, along with the consequential proceedings, has been challenged in the instant application.

12. Learned counsel for the accused-applicant, Sri P.K. Singh, submits that even if the allegations made by the complainant regarding the dishonour of the cheque are accepted, even then, the complaint was filed prematurely and was, therefore, not maintainable in law.

13. It is contended that as per the complaint, the legal notice was issued to the accused-applicant by registered post on 20.04.2016, which was allegedly refused to be accepted by him. Even assuming that the notice was refused to be accepted on the same date, the statutory period of fifteen days available to the accused-applicant for making payment under Section 138(c) of the Act, would have expired only on 05.05.2016. However, the complainant instituted the complaint prematurely on 02.05.2016, before the expiry of the above statutory period of 15 days.

14. Learned counsel for the accused-applicant further submits that, in view of the settled legal position, a complaint under Section 138 of the Negotiable Instruments Act, 1881, instituted before the expiry of the statutory period of fifteen days from the receipt or deemed receipt of the legal notice is not maintainable. It is contended that the learned Magistrate failed to consider this legal position and erroneously summoned the accused-applicant to face trial.

15. In support of his submissions, learned counsel for the accused-applicant has placed reliance upon the judgments of the Hon'ble Supreme Court in ***Yogendra Pratap Singh vs. Savitri Pandey and another (2014) 10 SCC 713***, and ***Gajanand Burange vs. Laxmi Chand Goyal 2022 SCC OnLine SC 1711***. On the strength of the aforesaid submissions, learned counsel prays that the instant application be allowed and the impugned summoning order and consequential proceedings be quashed.

16. Per contra, learned counsel for the complainant-respondent No. 2 submits that, even if the complaint was instituted before the expiry of the statutory period of fifteen days from the alleged refusal to accept the legal notice, nearly ten years have elapsed since the institution of the complaint, and the trial has still not concluded. It is, therefore, contended that, at this belated stage, it would not be appropriate to quash the proceedings and leave the complainant to institute a fresh complaint on the same facts.

17. Heard learned counsel for the parties.

18. Section 138 of the Negotiable Instruments Act, 1881 reads as under:-

"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 [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) the cheque 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, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) 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.

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

19. A three-Judge Bench of the Apex Court in the case of ***Yogendra Pratap Singh*** (supra) was considering –

(i) whether the Court can take cognizance of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 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 ?

(ii) If answer to the above question 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) of the Act for the filing of such a complaint has expired ?

The answer to the above questions have been given in the judgment as under:-

"34. Insofar as the present reference is concerned, the debate broadly centres around clause (c) of the proviso to Section 138 of the NI Act. The requirement of clause (c) of the proviso is that the drawer of the cheque must have failed to make the payment of the cheque amount to the payee within 15 days of the receipt of the notice. Clause (c) of the proviso offers a total period of 15 days to the drawer from the date of receipt of the notice to make payment of the cheque amount on its dishonour.

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.

36. A complaint filed before the expiry of 15 days from the date on which notice has been served on drawer/accused cannot be said to disclose the cause of action in terms of clause (c) of the proviso to Section 138 and upon such complaint which does not disclose the cause of action the court is not competent to take cognizance. A conjoint reading of Section 138, which defines as to when and under what circumstances an offence can be said to have been committed, with Section 142(b) of the NI Act, that reiterates the position of the point of time when the cause of action has arisen, leaves no manner of doubt that no offence can be said to have been committed unless and until the period of 15 days, as prescribed under clause (c) of the proviso to Section 138, has, in fact, elapsed. Therefore, a court is barred in law from taking cognizance of such complaint. It is not open to the court to take cognizance of such a complaint merely because on the date of consideration or taking cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer/accused has elapsed. We have no doubt that all the five essential features of Section 138 of the NI Act, as noted in the judgment of this Court in Kusum Ingots & Alloys Ltd. [Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd., (2000) 2 SCC 745 : 2000 SCC (Cri) 546 : AIR 2000 SC 954] and which we have approved, must be satisfied for a complaint to be filed under Section 138. If the period prescribed in clause (c) of the proviso to Section 138 has not expired, there is no commission of an offence nor accrual of cause of action for filing of complaint under Section 138 of the NI Act.

37. We, therefore, do not approve the view taken by this Court in Narsingh Das Tapadia [Narsingh Das Tapadia v. Goverdhan Das Partani, (2000) 7 SCC 183 : 2000 SCC (Cri) 1326] and so also the judgments of various High Courts following Narsingh Das Tapadia [Narsingh Das Tapadia v. Goverdhan Das Partani, (2000) 7 SCC 183 : 2000 SCC (Cri) 1326] that if the complaint under Section 138 is filed before the 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.

38. Rather, the view taken by this Court in Sarav Investment & Financial Consultancy [Sarav Investment & Financial Consultancy (P) Ltd. v. Llyods Register of Shipping Indian Office Staff Provident Fund, (2007) 14 SCC 753 : (2009) 1 SCC (Cri) 935] wherein this Court held that service of notice in terms of Section 138 proviso (b) of the NI Act was a part of the cause of action for lodging the complaint and communication to the accused about the fact of dishonouring of the cheque and calling upon to pay the amount within 15 days was imperative in character, commends itself to us. As noticed by us earlier, no complaint can be maintained against the drawer of the cheque before the expiry of 15 days from the date of receipt of notice because the drawer/accused cannot be said to have committed any offence until then. We approve the decision of this Court in Sarav Investment & Financial Consultancy [Sarav Investment & Financial Consultancy (P) Ltd. v. Llyods Register of Shipping Indian Office Staff Provident Fund, (2007) 14 SCC 753 : (2009) 1 SCC (Cri) 935] and also the judgments of the High Courts which have taken the view following this judgment that the complaint under Section 138 of the NI Act filed before the expiry of 15 days of service of notice could not be treated as a complaint in the eye of the law and criminal proceedings initiated on such complaint are liable to be quashed.

39. Our answer to Question (i) is, therefore, in the negative.

40. The other question is that if the answer to Question (i) 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.

41. Section 142 of the NI Act prescribes the mode and so also the time within which a complaint for an offence under Section 138 of the NI Act can be filed. A complaint made under Section 138 by the payee or the holder in due course of the cheque has to be in writing and needs to be made within one month from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. The period of one month under Section 142(b) begins from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. However, if the complainant satisfies the court that he had sufficient cause for not making a complaint within the prescribed period of one month, a complaint may be taken by the court after the prescribed period. Now, since our answer to Question (i) is in the negative, we observe that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to Question (i). As we have already held that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the

proviso, satisfying the court of sufficient cause. Question (ii) is answered accordingly."

20. The Apex Court has again considered the issue in ***Gajanand Burange*** (supra) wherein the earlier precedent of ***Yogendra Pratap Singh*** (supra) was followed.

21. From the above law laid down by the Apex Court it is apparent that if a complaint is filed before the expiry of a period of 15 days, from the date of receipt of notice by the drawer as contemplated in Section 138(c) of the Negotiable Instruments Act, 1881, then it is not legally maintainable and the remedy is to file fresh complaint by relying upon the proviso to Section 142(b) of the Act.

22. In the instant case, as per the complaint, the complainant became aware on 06.4.2016 that cheque No. 462111 dated 23.2.2016 for Rs.1,50,000/- drawn on ING Vysya Bank Ltd, Kanpur branch has been dishonoured due to insufficient funds available in the bank account of the accused applicant, regarding which a registered legal notice was got issued by the complainant through his counsel Sri Sudhir Kumar Awasthi on 20.4.2016, which was allegedly refused to be accepted by the accused applicant. Even if, it is presumed that the registered legal notice was refused to be accepted by the accused applicant on the same day i.e. 20.4.2016, even then, the complaint could only have been filed after the expiry of 15 days from the refusal i.e. on 06.5.2016 or thereafter, but in this case, admittedly, the complaint has been filed before the Magistrate on 02.5.2016, which is premature and on this ground, legally not maintainable, as has been held by the Apex Court in the above mentioned cases. In view of the above facts, the trial court has certainly erred in taking cognizance on the complaint by impugned order dated 10.5.2016, which is unsustainable and is liable to be set aside.

23. For the aforesaid reasons, the instant application under Section 482 CrPC is hereby ***allowed***. Consequently, the impugned order dated 10.5.2016 passed by the learned Additional Chief Metropolitan Magistrate Court no.1, Kanpur Nagar whereby the accused applicant was summoned to face trial under Section 138 of the Negotiable Instruments Act, 1881 is hereby set aside.

24. The complainant respondent would be at liberty to institute a fresh complaint and since the earlier complaint could not be presented within the time prescribed by Section 142(b) of the Negotiable Instruments Act, 1881, the complainant would be at liberty to seek the benefit of the proviso by satisfying the trial court of sufficient cause for the delay in instituting the complaint.

25. In the event the 2nd complaint is filed within a period of 2 months from the date of this order, the trial court is directed to dispose of the complaint within a period of 6 months.

Order Date:- 02.11.2026
Mayank

(Sandeep Jain, J.)

Digitally signed by :-
MAYANK KUMAR SHARMA
High Court of Judicature at Allahabad