

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

561-A Cr.P.C No. 147/2008,
Cr.M.P No. 166/2008

Date of Decision: 26.09.2011

Ved Mahajan

Vs.

Janki Nath Budki

CORAM:

Mr. Justice J.P.Singh, Judge.

Appearing counsel:

For the Petitioner (s) : Mr. K.K.Pangotra, Advocate.

For the Respondent(s) : Mr. Raghbir Singh, Advocate.

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| i) | Whether approved for reporting
in Press/Journal/Media | : | Yes/No |
| ii) | Whether to be reported
in Digest/Journal | : | Yes/No |
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The petitioner-Ved Mahajan issued Cheque No. 665890 dated 25.09.2006 for Rs.3,30,000/- in favour of Janki Nath Budki-respondent. It was dishonoured when presented for payment. The respondent learnt about dishonour of Cheque on 06.10.2006. He sought payment of the amount covered by the Cheque serving Notice on the petitioner. The payment was avoided on one or the other pretext.

Another Notice was sent by the respondent to the petitioner on 14.10.2007 seeking payment within fifteen days with the intimation that non-payment of amount within fifteen days would entail prosecution under Section 138 of the Negotiable Instruments Act, 1881.

Learned Judicial Magistrate, 1st Class (Fourth Additional Munsiff), Jammu issued process on the respondent's Complaint

prima facie finding commission of offence under Section 138 of the Negotiable Instruments Act by the petitioner.

The petitioner seeks quashing of proceedings before the learned Magistrate on respondent's Complaint.

Considered the submissions of learned counsel for the parties.

Cognizance of offence punishable under Section 138 of the Negotiable Instruments Act is permissible only upon a Complaint, in writing, made by the 'payee' or, the "holder in due course" of the Cheque, as the case may be, when the Complaint was made within one month of the date on which cause of action arises.

Cause of action would arise when the drawer of the Cheque fails to make payment of the 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 Notice in terms of Section 138 (b) of the Act.

The cause of action accrued to the respondent when the petitioner did not make payment for the dishonoured Cheque within fifteen days of the receipt of Notice in terms of Section 138 (b) of the Act.

Cognizance of the offence could, therefore, be taken within one month of the accrual of cause of action.

Complaint filed after about one year of the accrual of cause of action and that too without any cause muchless

sufficient, which had disabled the complainant to file Complaint within the statutory period, was, therefore, untenable in terms of the provisions of Section 142 of the Negotiable Instruments Act, in terms whereof no Court shall take cognizance of any offence punishable under Section 138 of the Act unless the Complaint was made within one month of the date on which the cause of action arose.

Proceedings initiated by the learned Magistrate on respondent's Complaint, are, therefore, abuse of the process of Court.

Accordingly, allowing this Petition, the proceedings initiated by learned Judicial Magistrate, 1st Class, (Fourth Additional Munsiff), Jammu on respondent's Complaint, are quashed dismissing the respondent's Complaint.

**(J. P. Singh)
Judge**

JAMMU
26.09.2011
Pawan Chopra