

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 5990/2024

M/s Victory Flour Mills, through its Partner Mr. Vikrant Yadav S/o Sh. Mahesh Yadav R/o House No. RZ-2, Rao Harnath Marg, Opp. Police Station, Kapashera, New Delhi 110037

-----Petitioner

Versus

1. Smt. Sneh Lata Goyal W/o Sh. Manoj Kumar, aged about 43 Years, R/o House No. 70, Mohalla Naiwada, Tapukara, Tehsil Tijara, Distt. Alwar, Rajasthan 301017
2. Mr. Praveen Kumar Yadav Son of Shri Mahesh Yadav, Resident of House No. RZ-2, Gali No. 2, Rao Harnath Marg, Opp. Police Station, Kapashera, New Delhi 110037 Director of M/s Victory Flour Mills, Plot No. H1/871, Industrial Area Khuhkhera (Bhiwadi), Tehsil Tijara, Distt. Alwar, Rajasthan 301017
3. Mr. Vikrant Yadav Son of Shri Mahesh Yadav, Resident of House No. RZ-2, Gali No. 2, Rao Harnath Marg, Opp. Police Station, Kapashera, New Delhi 110037, Director of M/s Victory Flour Mills, Plot No. H1/871, Industrial Area Khuhkhera (Bhiwadi), Tehsil Tijara, Distt. Alwar, Rajasthan 301017

-----Respondents

For Petitioner(s)	:	Mr.Sahil Mongia with Mr.Abhishek paliwal
For Respondent(s)	:	Mr.Chandra Shekhar

JUSTICE ANOOP KUMAR DHAND

Order

06/05/2026

1. The instant criminal misc. petition has been submitted for quashing the impugned order dated 07.09.2016, passed by the Court of Judicial Magistrate, Bhiwadi, Alwar, by which cognizance has been taken against the petitioner under Section 138 of the

Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') and for quashing of the entire subsequent proceedings arising out of the Criminal Case No.1683/2016.

2. Learned counsel for the petitioner submits that the complainant-respondent (hereinafter referred to as 'the complainant') has filed a complaint under Section 138 of the NI Act against the petitioner before the Court of Judicial Magistrate, Bhiwadi, Alwar with the averments that the cheque issued by the petitioner was dishonoured on 01.03.2016. Thereafter, a legal notice was sent by the complainant to the petitioner on 02.03.2016 and subsequently, another legal notice was sent by the complainant to the petitioner on 14.03.2016. Counsel submits that thereafter, a premature complaint was filed by the complainant on 28.03.2016, but the same was later on withdrawn by him by way of submitting an application on 16.05.2016 on the premise that the complaint was premature and thereafter, the complainant filed second complaint against the petitioner under Section 138 of the NI Act on 30.05.2016.

3. Counsel submits that the second complaint was barred by limitation, in terms of the Section 142 of the NI Act and overlooking this fact, the learned Court below has taken cognizance against the petitioner in the proceedings arising out of the aforesaid time barred complaint. Counsel further submits that no application under Section 5 of the Limitation Act was submitted by the complainant, seeking condonation of delay in filing the complaint. Hence, under these circumstances, the impugned cognizance order dated 07.09.2016 as well as the consequential proceedings arising out of the second criminal complaint are not

sustainable against the petitioner and the same are liable to be quashed and set-aside.

4. In support of his contention, learned counsel for the petitioner has placed reliance upon the judgments passed by the Hon'ble Apex Court in the case of **H.S. Oberoi Buildtech & Ors. Vs. M/s MSN Woodtech** reported in **2025 SCC OnLine SC 2906** and **S. Nagesh Vs. Shobha S. Aradhya** reported in **2026 SCC OnLine SC 18**.

5. *Per contra*, learned counsel appearing on behalf of the complainant opposed the arguments raised by counsel for the petitioner and submitted that on an earlier occasion, a premature complaint was filed and the same was withdrawn by way of filing an application dated 16.05.2016 and thereafter, the second complaint was filed on 30.05.2016 narrating all the above facts and no facts were concealed before the trial Court. Accordingly, after taking into account, the reasons of delay, the learned Magistrate has rightly taken cognizance against the petitioner vide impugned order dated 07.09.2016. Counsel further submits that after duly participating in the proceedings, initiated against the petitioner, when the matter has reached to its fag end, the petitioner has submitted the instant petition in the year 2024 with the intent to delay the disposal of complaint. Hence, under these circumstances, interference of this Court is not warranted.

6. In support of his contention, learned counsel for the complainant has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Birendra Prasad Sah Vs. The State of Bihar** reported in **(2019) 7 SCC 273**.

7. Heard and considered the submissions made at the Bar and perused the material available on record.

8. The following facts are undisputed that when the cheque in question was dishonoured by the complainant's banker on 01.03.2016, he sent the first legal notice to the petitioner on 02.03.2016 and subsequently, a second legal notice was sent to the petitioner by the complainant on 14.03.2016. Thereafter, a complaint under Section 138 of the NI Act was filed by the complainant before the concerned Court on 26.03.2016. This fact is also not in dispute that the aforesaid complaint was prematurely filed and accordingly, the same was withdrawn on 16.05.2016. After withdrawal of the aforesaid premature complaint, the second complaint was filed by the complainant against the petitioner on 30.05.2016.

9. Now, the question which remains for consideration before this Court is as to 'whether the instant complaint filed by the complainant against the petitioner can be treated as time barred and whether cognizance can be taken against the petitioner on the basis of the second complaint'.

10. This issue is no more *res integra* as the same has been decided by the Hon'ble Apex Court in the case of **Yogendra Pratap Singh Vs. Savitri Pandey** reported in **(2014) 10 SCC 713**, where the following two issues came up for the consideration of the Hon'ble Apex Court:-

"(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,

(ii) If answer to question No.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?"

11. The aforesaid issues before the Hon'ble Apex Court have been answered in Para Nos.30 to 41 of the judgment, which read as under:

"30. Section 138 of the NI Act comprises of the main provision which defines the ingredients of the offence and the punishment that would follow in the event of such an offence having been committed. Appended to this section is also a proviso which has three clauses viz. (a), (b) and (c). The offence under Section 138 is made effective only on fulfilment of the eventualities contained in clauses (a), (b) and (c) of the proviso. For completion of an offence under Section 138 of the NI Act not only the satisfaction of the ingredients of offence set out in the main part of the provision is necessary but it is also imperative that all the three eventualities mentioned in clauses (a), (b) and (c) of the proviso are satisfied. Mere issuance of a cheque and dishonour thereof would not constitute an offence by itself under Section 138.

31. Section 138 of the NI Act has been analysed by this Court in Kusum Ingots & Alloys Ltd.? wherein this Court said that the following ingredients are required to be satisfied for making out a case under Section 138 of the NI Act : (SCC p. 753, para 10)

"(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

(ii) that 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;

(iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the 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 the bank;

(iv) the payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.”

32. We are in agreement with the above analysis.

33. In K.R. Indira®, a two-Judge Bench of this Court observed that the offence under Section 138 of the NI Act could be completed if all the above components are satisfied.

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.²; 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 Tapadia³ and so also the judgments of various High Courts following Narsingh Das Tapadia; 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 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 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 (ii) 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.”

12. The Hon’ble Apex Court has categorically held that in such like matters, the subsequent complaint, if filed cannot be treated as time barred, if the earlier complaint, which was found to be pre-mature, was withdrawn by the complainant.

13. The judgments relied upon by counsel for the petitioner in the cases of **H.S. Oberoi Buildtech** (supra) & **S. Nagesh** (supra) are not applicable in the facts and circumstances of the present case inasmuch as the proposition of law as propounded by the Hon’ble Apex Court, in the case of **Yogendra Pratap Singh** (supra) has not been taken into account in the above two judgments and these cases were decided by the Hon’ble Apex Court on the basis of their individual facts.

14. Even, as per the proviso attached to Section 142 of the NI Act, a delayed complaint can be filed by the complainant, if the reasons of delay are explained and if sufficient cause is shown. The similar view has also been taken by the Hon’ble Apex Court in the case of **Birendra Prasad Sah** (supra) wherein at Para Nos.10 to 12, it is held as under:-

“10. In the present case, the facts narrated above indicate that the appellant issued a legal notice on 31 December 2015. This was within a period of thirty days of the receipt of the memo of dishonour on 4 December 2015. Consequently, the requirement stipulated in

proviso (b) to Section 138 was fulfilled. Proviso (c) spells out a requirement that the drawer of the cheque has failed to make payment to the holder in due course or payee within fifteen days of the receipt of the notice. The second respondent does not as a matter of fact, admit that the legal notice dated 31 December 2015 was served on him. The appellant has in the complaint specifically narrated the circumstance that despite repeated requests to the postal department, no acknowledgment of the notice was furnished. It was in these circumstances that the appellant issued a second notice dated 26 February 2016. Cognizant as we are of the requirement specified in proviso (b) to Section 138, that the notice must be issued within thirty days of the receipt of the memo of dishonour, we have proceeded on the basis that it is the first notice dated 31 December 2015 which constitutes the cause of action for the complaint under Section 138.

11. The complaint was instituted on 11 May 2016. Under Section 142(1), a complaint has to be instituted within one month of the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. The proviso however stipulates that cognizance of the complaint may be taken by the court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period. Both in paragraphs 7 and 8 of the complaint, the appellant indicated adequate and sufficient reasons for not being able to institute the complaint within the stipulated period. These have been adverted to above. The CJM condoned the delay on the cause which was shown by the appellant for the period commencing from 6 April 2018. However, if paragraphs 7 and 8 of the complaint are read together, it is evident that the appellant had indicated sufficient cause for seeking condonation of the delay in the institution of the complaint. The High Court has merely adverted to the presumption that the first notice would be deemed to have been served if it was dispatched in the ordinary course. Even if that presumption applies, we are of the view that sufficient cause was shown by the appellant for condoning the delay in instituting the complaint taking the basis of the complaint as the issuance of the first legal notice dated 31 December 2015.

12. In the view which we have taken, we have come to the conclusion that the impugned judgment of the High Court is unsustainable. The appeal is accordingly allowed and the order passed by the learned Single Judge is set aside. The complaint shall accordingly stand restored to the file of the trial court.”

15. In the instant case also, the reasons of delay in filing the second complaint have been explained by the complainant in Para No.5 and 6 of the complaint. Hence, in view of the proviso attached to Section 142 of the NI Act, the explanation has been rightly entertained by the Court below while taking cognizance against the petitioner.

16. Even otherwise also, the instant plea taken by the accused-petitioner cannot be allowed to be entertained at the fag end of the trial, when the trial has reached to its final stage, after recording of evidence of both the sides.

17. Hence, under these circumstances, this Court finds no merit and substance in the instant petition, which warrants any interference of this Court.

18. Accordingly, the instant petition stands dismissed. Stay application and all pending application(s), if any, also stand dismissed.

(ANOOP KUMAR DHAND),J