

49) CC NI ACT 1716/2021

Seema Singh Vs. Rohit Kr. Sharma

CNR NO. DLSH020086152021

NDOH: 16.04.2022

LDOH: 14.01.2022

02.02.2022

Matter taken up through VC on CISCO Webex on an application for early hearing being filed by the complainant.

Present: Mr. Ankit Tandon, Ld. Counsel for complainant alongwith complainant.

File is taken up today on an application for early hearing being filed by the complainant. Heard. Allowed. Matter is taken up today itself .

Ld. Counsel for the complainant has submitted that he has filed the stamped cheque return memos, in compliance of order dated 16.11.2021. Perused.

Arguments on summoning heard.

This is a complaint filed for offence punishable under Section 138 Negotiable Instruments Act, 1881. Reader cum Ahlmad of this court has informed that the original complaint alongwith original documents has been filed for the purpose of safe custody and the same has been verified by him.

I have carefully perused the Complaint, affidavit of evidence and other annexed documents. I have conducted inquiry, in terms of Section 202 of Criminal Procedure Code. Prima facie, the present case is barred by limitation. However, it is pertinent to mention herein that in *Suo Motu Writ Petition (Civil) No. 3 of 2020; In Re: Cognizance for Extension of Limitation*, the Hon'ble Supreme Court

vide its order dated 10.01.2022 has directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the limitation period prescribed under provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881. Accordingly, I take cognizance of the offence committed under Section 138 of the Negotiable Instruments Act, 1881.

As regards the examination of the complainant under Section 200 Cr.P.C, the Hon'ble Apex Court in its judgment titled as **"A. C. Narayanan v. State of Maharashtra & Anr., (2014) 11 SCC 790"**, has held as under:-

"From a conjoint reading of Sections 138, 142 and 145 of the N.I. Act as well as Section 200 of the Code, it is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complaint. Once the complainant files an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it is thereafter open to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint. However, it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the Court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the N.I. Act. For the purpose of issuing process under Section 200 of the Code, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the N.I. Act. It is only if and where the Magistrate, after considering the complaint under Section 138 of the N.I. Act, documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon the complainant to remain

present before the Court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the N.I. Act.”

In light of the above-mentioned judgment, it is not incumbent upon this Court to examine the complainant on oath before issuing process.

Careful scrutiny of the complaint, verification in the form of affidavit of evidence and documents annexed shows that there is sufficient material on record for proceeding further against the accused for offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

Hence, **issue summons against the accused on filing of P.F./R.C./Approved Courier for 19.05.2022.** The process server is directed to serve the summons by way of affixation, in terms of Section 65 of Code of Criminal Procedure, 1973, if the premises found locked or same could not be served personally or in case of refusal to accept summons. Proof of service/tracking report be placed on record, on or before the next date of hearing.

Service be also effected upon the accused through e-mail, Whats App message (s) and/or text message (s) as provided by the complainant subject to filing of report of service.

In case of service of summons through permissible electronic mode, complainant is directed to file an affidavit affirming the veracity of the e-mail ID and Whats App number of the accused. Complainant is further directed that coloured screen shot of such

service, bearing date along with certificate under Section 65-B Indian Evidence Act be placed on record, on or before the next date of hearing.

Reader-cum-Ahlmad is directed to make an endorsement on the summons, in terms of the judgment of the Hon'ble Apex Court in case titled as **Damodar S. Prabhu v. Sayed Babalal H, AIR 2010 SC 1907** that the accused can make an application for compounding of the offence at the first or second hearing of the case and if such an application is made, compounding may be allowed by the Court without imposing any costs on the accused and if, such an application is made before the Court at a subsequent stage, compounding can be allowed subject to the condition that the accused shall deposit 10% of the cheque amount with District Legal Services Authority.

The Ahlmad is directed to mention the official e-mail ID and video conferencing link of this Court on the summons. Complainant is directed to file PF and take steps within two weeks including providing copy (ies) of complaint along with documents otherwise the complaint may be dismissed under Section 204 (4) Cr.P.C.

Put up for appearance of accused and further proceedings on 19.05.2022.

Earlier date given as 16.04.2022 stands cancelled.

(RUBY NEERAJ KUMAR)
MM(NI Act) Digital Court
Shahdara/KKD/Delhi
02.02.2022