

(2020) 09 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : Criminal Main No. 483, 484 Of 2019, Criminal Miscellaneous No. 1175, 1177 Of 2019

Waryam Singh

APPELLANT

Vs

Jammu Ess Lee Finance

RESPONDENT

Date of Decision : 07-09-2020

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138, 142, 142(1)(b)
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 420
Code Of Criminal Procedure, 1973 — Section 190, 199, 200, 202, 203, 204, 204(E), 205(E), 242, 482
Code Of Criminal Procedure, 1898 — Section 561(A)
Constitution Of India, 1950 — Article 20(2)

Citation : (2020) 09 J&K CK 0015

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : R. P. Sharma, Pranav Kohli

Final Decision : Dismissed

Judgement

Javed Iqbal Wani, J

1. These two petitions raise akin and analogies issues and therefore are taken up together for adjudication.

2. At the outset it would be worthwhile to mention that before filing of the aforesaid two petitions, the petitioner herein filed two 561-A CrPC petitions bearing Nos. 650/2017, MP No. 01/2017 and 651/2017 titled as "Waryam Singh Vs. M/s Chanda Hire Purchase Finance Jammu and "Waryam Singh Vs. M/s Jammu ESS IEE Finance Pvt. Ltd." before this court on the premise that complaints bearing File Nos. 173/complaint and 174/complaint had been filed by complainant / respondent herein under Section 138 Negotiable Instrument Act (herein after for short NI Act) and Section 420 RPC on 16.03.2016 before the Court of Special Mobile Magistrate, 13th Finance Commission, Jammu, (herein

after for short trial court) wherein cognizance was taken on 16.03.2016 and consequently summons issued against the accused / petitioner herein. In the said petitions, petitioner questioned the maintainability of complaints as also cognizance order dated 16-03-2016 as also orders dated 01.07.2017 and 14.08.2017 as well passed by the trial court.

The aforesaid petitions came to be disposed of by this court separately after hearing appearing counsel for the parties on 31.05.2018, whereby order of cognizance dated 16.03.2016 passed in both the complaints came to be quashed allowing the trial court to pass fresh order in accordance with the law.

Significantly this court did neither render any decision qua the other grounds of challenge/ points raised nor granted any relief other than above in the aforesaid petitions.

Keeping in view the above position, the facts those emerge from both the above petitions now require to be delineated.

CRM(M) No. 483/2019

3. Petitioner in the instant petition has sought following reliefs: -

"Petition u/s 561-A CrPC for quashing the judgment and order dated 25.05.2019 passed by the Learned Principal Sessions Judge, Jammu whereby the revision petition has been rejected against the judgment and order of Learned Special Mobile Magistrate (Sub-Judge 13 FC) Jammu in File no. 174/complaint on 17.12.2018 where under fresh cognizance has been taken of complaint u/s 138 Negotiable Instrument Act DOI 16.03.2016 which is contrary to the judgement of the Hon'ble High Court of J&K in petition 561-A No. 651/2017 holding the cognizance taken of complaint on 16.03.2016 on unsigned affidavit purportedly filed as a preliminary statement bad in law and quashed with further order that permission granted to rectify defect by permitting the placement of the affidavit on 22.4.2017 after the expiry of approximately one year from the date when the court had already issued the process at a subsequent point of time by virtue of order dated 1.7.2017 was totally perverse and impermissible in law thereby quashing the order of cognizance and the proceedings conducted on the basis thereof.

For quashment of the order of taking cognizance dated 17.12.2018 by the trial court impugned in the revision petition along with the proceedings on the complaint being against law and procedure, by wrongful exercise of jurisdiction."

4. The aforesaid reliefs have been sought by the petitioner on the premise that in a complaint bearing No. 174/ complaint filed under section 138 NI Act, the trial court took cognizance thereupon and issued process against the petitioner vide order dated 17.12.2018 against the spirit of order of the High court dated 31.05.2018 (i.e. order passed in above referred earlier 561-A petition bearing No. 650/2017 filed by the petitioner before this court). According to the petitioner the said order of cognizance dated 17.12.2018 came to be challenged

before the Learned Sessions Judge, Jammu, (herein after for short the revisional court) in a revision petition being file No. 19 / Criminal Revision, which however came to be rejected vide order dated 25.05.2019.

5. The petitioner in the instant petition thus besides challenging the complaint, proceedings conducted therein as also aforesaid orders of the trial court also questions the order supra of the revisional court, on the following grounds: -

a. That the entire proceedings subsequent to the order of Hon'ble High court as per interim orders along with order of recording preliminary statement on 17.12.2018 are bad in law. It has the effect to revive the complaint dated 16.03.2016 which was declared invalid already by the Hon'ble High court along with rectification order and subsequent orders as entire proceedings stood quashed. On a invalid complaint the fresh order after issuing notice for calling the accused to be present on date 9.6.2018, 30.06.2018, 21.07.2018, 24.08.2018 and recording the presence of counsel of parties on 06.10.2018 and ultimately for putting up the file for arguments after recording the presence of counsel of complaint and accused, the file was again reverted back to pre-cognizance stage. Cognizance work was started again by recording statement of complainant on 17.12.2018 and thereafter issue of fresh process vide impugned order dated 17.12.2018. It was bad and impressible in law.

b. That it is pertinent to mention that the trial court after 5. 11.2018 order did not permit the counsel of accused to address arguments and pushed the accused to go away out of proceedings.

The entire process and procedure adopted after receipt of file from the Hon'ble High Court was unwarranted, illegal per se. It caused serious prejudice to rights of petitioner to have a fair, legal and proper trial only on a valid complaint and cognizance under a legal order in accordance strictly with CrPC, the procedural law as well as the Negotiable Instruments Act, the substantive law on the subject.

c. That fresh cognizance notice under order impugned dated 17.12.2018 was not sustainable when already the accused was brought before the trial court subsequent to order of Hon'ble High Court. He was directed to address arguments on 5.11.2018 and thereafter without affording opportunity of being heard on the maintainability of complaint and its cognizance, the new cognizance order was passed after pushing the accused out of process as if he had not attended the court earlier. It was novel, uncalled for play with the liberties of petitioner which cannot be countenanced in a criminal trial. By pushing the accused back and forth in the proceedings after receipt of file from the Hon'ble High Court, the trial court has committed a great illegality. It vitiated the entire trial conducted by it so far. It caused serious prejudice and denial of justice.

d. That the trial court issued process against the petitioner on 9.6.2018 without application of mind to the facts of the case. It was done without taking cognizance under law. The orders of the Hon'ble High Court were not perused by it. There was no valid complaint before t. After repeated orders of summoning

the petitioner on 30.06.2018, 21.07.2018, 24.08.2018, 06.10.2018, 19.10.2018 when the petitioner was again asked to appear on 5.11.2018 the file was fixed for arguments on cognizance. This order was again reviewed. The petitioner accused was asked to go away. In his absence preliminary statement dated 17.12.2018 was recorded and the same day order impugned of cognizance and for compelling the appearance of the accused was passed which reads as under:

"In the backdrop of what has been discussed herein above, I am of the view that prima facie offence u/s 138 Negotiable Instrument Act is made out to compel the appearance of accused. Let the summon be issued to the accused which shall be executed through SHO, Police Station concerned. It shall also be....."

e. That under the provisions of CrPC section 202, 203 & 204 there is no provision to review the orders once the accused has been made appear to address the arguments on the cognizance and thereafter to again pass orders in the manner done by the trial court. The summoning of the accused by order dated 9.6.2018 without taking cognizance on a validly instituted complaint amounted to illegal exercise of jurisdiction. By pushing out the accused from the court proceedings after calling upon the petitioner to address arguments on 5.11.2018 on cognizance and again reversing back to take down the preliminary statement of the complainant, the trial court has ostensibly violated the mandate of law and also the liberties of the petitioner without any justifiable reason.

f. The order of summoning the petitioner after receipt of file from the Hon'ble High Court without taking cognizance and issuance of process in accordance withlaw the provisions of section 202 were contravened by the Ld. Magistrate. It was impermissible. The entire proceedings conducted under the impugned orders passed by the trial court after receipt of file from the Hon'ble High Court are liable to be quashed and set aside. The impugned orders are against principles settled by the Hon'ble Supreme Court in the case of Adalat Prasad Vs Rooplal Jindal & Ors reported in 2004, 7 SCC 338.

g. That the pending alleged complaint without signature on affidavit in support of complaint as a preliminary statement on affidavit filed on 16.3.2018 thereafter substituted by another affidavit of same copy vide order 22.11.2017 was already held to be bad in law without any authority, perverse and impermissible in law. Emphasis was laid in the judgment on the principles settled by the Hon'ble Supreme Court reported in case of Pepsi Foods Ltd Vs Special Magistrate & Ors that summoning of accused in a criminal case is a serious matter and criminal law cannot be set in motion as a matter of course. Non-application of mind by the Magistrate was fatal to the liberties of petitioner who is being repeatedly put to trial. It was hit by the doctrine of double jeopardy as contained in Article 20(2) of Constitution read with sec 403 of CrPC.

h. That repeated prosecution of one and the same complaint u/s 138 of Negotiable Instrument Act is not permissible in law. Failure to apply mind to the facts of the case and the order passed the Hon'ble High Court has vitiated the

trial. Fresh cognizance order is not permissible. It is highly erroneous and incompetent. It has caused a failure of justice.

i. That the learned JMIC has entertained another complaint u/s 138 NIA titled M/ S Chadha Hire Purchase Finance vs Waryam Singh in file No. 173/Comp with DOI 16.03.2016. Similar order of taking cognizance has been repeated in complete disregard to the provisions of law and procedure in a mechanical manner without considering the record of case and the ingredients of offence u/s 138 NIA and without following the procedure.

j. That the impugned complaint is based on pre signed cheques given as security. No date or amount was filled in the cheques at the time of deposit with the respondent. The date and amount was not settled at the time of issuance of cheques. It has been filled by the respondent himself to lay a false complaint without any settled account/ amount or agreement subsisting at the time of presentation of complaint. There is nothing outstanding against the petitioner.

k. That the petitioner filed consumer complaint on 01.02.2016 before the Hon'ble Divisional Forum under Consumer Protection Act at Jammu against the respondent for deficiency in service by withholding NOC of truck No. JK02P/9043 even after offering balance of Rs. 98,600.00, receipt of full amount. The respondent has filed objections to it and the consumer complaint is pending.

l. That the alleged payee being a company it was mandatory for maintaining the complaint on behalf of the company, a legal entity, to produce the resolution of the directors of the company or other authority to authorize a living person to prosecute the case on behalf of the company. Neither any mention was made in the title and body of the complaint about the authority of the signature of the complaint nor was any document in this behalf produced along with the complaint which made it incompetent on behalf of the alleged payee company.

m. That the alleged blank cheques lying with the respondent were without any legally enforceable debt or liability at the time cheque was issued as security. There was nothing outstanding or due at the relevant date and there was no agreement or authority given to the petitioner to fill up the blank cheque showing the amount ascertained or ascertainable to discharge any supposed debt or liability.

n. That the complainant has misused the trust reposed in him to return the blank cheques as after settlement of all payments the cheques were retained with malafide intention to harass and humiliate the petitioner without any justifiable cause on the basis of bogus claim and complaint.

o. That the allegations made in the complaint do not constitute any offence much less offence under section 420 RPC and section 138 NIA.

p. That the matter is of civil nature based on contracts and predominantly a civil dispute of commercial transactions. The complaint has been filed with a malafide intention to cause oppression and prejudice in the trial of consumer complaint

against respondent. The quashing of complaint as a whole in the facts and circumstances of the case would sub-serve the interest of justice, fair play and principles of natural justice and good conscience.

CRM(M) No. 484/2019

6. The petitioner in the instant petition has sought following reliefs: -

"Petition u/s 561-A CrPC for quashing the judgement and order dated 25.05.2019 passed by the Learned Principal Sessions Judge, Jammu whereby the revision petition has been rejected against the judgement and order of learned Special Mobile Magistrate (Sub-Judge 13 FC) Jammu in File No. 173/ complaint on 17.12.2018 where under fresh cognizance has been taken of complaint u/s 138 Negotiable Instrument Act DOI 16.03.2016 which is contrary to the judgement of the Hon'ble High Court of J&K in petition 561-A No. 650/2017 holding the cognizance taken of complaint on 16.03.2016 on unsigned affidavit purportedly filed as a preliminary statement bad in law and quashed with further order that permission granted to rectify defect by permitting the placement of the affidavit on 22.04.2017 after the expiry of approximately one year from the date when the court had already issued the process at a subsequent point of time by virtue of order dated 1.07.2017 was totally perverse and impermissible in law thereby quashing the order of cognizance and the proceedings conducted on the basis thereof.

For quashment of the order of taking cognizance dated 17.12.2018 by the trial court impugned in the revision petition along with the proceedings on the complaint being against law and procedure, by wrongful exercise of jurisdiction."

7. The aforesaid reliefs have been sought by the petitioner on the premise that in a complaint bearing No. 173/complaint filed u/s 138 N I Act, the trial court took cognizance thereupon and issued process against the petitioner vide order dated 17-12-2018 against the spirit of the High Court order dated 31-05-2018 (i.e. order passed in above referred 561-A petition bearing No. 651/2017 filed by the petitioner before this Court). According to the petitioner the said order of cognizance dated 17-12-2018 came to be challenged before the learned Sessions Judge, Jammu (herein after for short the revisional Court) in a revision petition being file No. 19/Criminal Revision, which however, came to be rejected vide order dated 25-05-2019.

8. In this petition as well the petitioner has raised and urged same and similar contentions and grounds as have been raised by him in CRM(M) No. 483/2019 supra, as such it may not be appropriate to reproduce the same.

9. Heard appearing counsel for the parties, perused the record and considered the matter.

10. Perusal of the record reveals that two complaints under section 138 NI Act being File No. 173/complaint and 174/complaint both dated 16.03.2019 had been filed by respondent herein against the petitioner qua bouncing of payee

account cheque bearing No. 080420 dated 25.01.2016 for an amount of Rs. 3,70,000/- and payee account cheque bearing No. 080419 dated 27.01.2016 for an amount of Rs. 5,80,000/-, respectively before the trial court, whereupon, the trial court took cognizance and summoned the accused on 16.03.2016. The trial court during the course of proceedings passed two orders dated 01.07.2017 and 14.08.2017 in both the complaints in terms whereof, the complainant was allowed to place on record the original copy of preliminary evidence affidavit attested by Oath Commissioner, as also permitting table amendment in the complaint to show that complaints have been filed by the Company through its Managing Director namely Rajat Chadha.

11. Further perusal of the record reveals that the petitioner herein filed 561-A petitions bearing Nos. 650/2017 and 651/2017 before this court questioning the maintainability of complaints supra, orders of cognizance dated 16.03.2019 as well as above orders dated 01.07.2017 and 14.08.2017 passed therein the said complaints.

12. Further perusal of the record reveals that the said petitions came to be decided by this court on 31.05.2018 quashing the order of cognizance dated 16.03.2019 alone without rendering any decision on any other point/ issue raised therein, directing the trial court to proceed to pass fresh order in accordance with law while remitting the record back to the trial court.

13. Further perusal of the record reveals that the trial court upon receiving the record back from this court issued notice in both the complaints supra to the petitioner herein on 09.06.2018, 30.06.2018, 21.07.2018, 24.08.2018 and 06.10.2018. In response to notice, the petitioner herein appeared with his counsel on 06.10.2018, 19.10.2018 and 05.11.2018 before the trial court in both the complaints.

14. Further perusal of the record reveals that on 17.12.2018 trial court in both the complaints after recording preliminary statement of the complainant on 12.12.2018 passed the following order of cognizance and summoning:-

Heard learned counsel for the complainant and perused the file. Perusal of the file reveals that by virtue of order dated 16.03.2016, learned Chief Judicial Magistrate Jammu transferred the complaint to this court for disposal under law.

On presentation of the complaint, process was issued by this court against the accused person on 16.03.2016, however, same was challenged by the accused before the Hon'ble High court of J&K along with order dated 01.07.2017. Hon'ble High Court of J&K vide its order dated 31.05.2018 quashed the order of cognizance as well as the proceedings conducted on the basis thereof by this court. Accordingly, Hon'ble High Court of J&K directed this court to pass fresh order in accordance with law. In this way, this complaint came up for consideration today.

After hearing the learned counsel for the complaint, I have perused the

complaint, pre-summoning statement of complainant and gone through the memo of dishonor of cheque and the copy of demand notice it appears that accused for liability/ debt of Rs. 3.70 lacs only towards the complainant had issued one cheque bearing No. 080420 dated 25.01.2016 payable at Union Bank of India, Gandhi Nagar Jammu. The complainant presented the said cheque before the Union Bank of India, Gandhi Nagar, Jammu for encashment purposes but the cheque was returned unpaid with memo dated 06.02.2016 with the remarks of "Funds insufficient" . Thereafter, complainant issued demand notice to the accused for the payment of the cheque amount mentioned by registered post on 17.02.2016, the postal receipt bearing No. RE8559510021N dated 17.02.2016 signifying the issuance of demand notice is also placed on record. Since the notice is stated to have been issued on 17.02.2016 and the person complained against has not made the payment within period of 15 days as provided under clause © to proviso of Section 138 Negotiable Instrument Act. Hence, the cause of action accrued to the complainant in terms of section 138 NI. Act and the complaint is presented on 16.03.2016.

In the backdrop of what has been discussed herein above, I am of the view that prima facie offence u/s 138 Negotiable Instrument Act is made out to compel the appearance of accused. Let the summon be issued to the accused which shall be executed through SHO, Police Station concerned. It shall also be impressed upon the accused in the summon that he can make application for compounding of the offence alleged against him at the first or second hearing of the case. If such an application is made by the accused, the compounding thereof may be allowed by this court without imposing costs upon him. The direction as aforesaid is incorporated in the summons in compliance to the judgement of Hon'ble Supreme Court of India rendered in Criminal Appeal No. 963/2010 titled Damodar S. Prabhu Vs. Saed Baba Lal H. A. copy of this order shall be sent to accused along with summon. Let the file be put up for further proceedings on 29.01.2019."

15. Further perusal of the record reveals that petitioner/ accused appeared in response to the aforesaid order along with his counsel on 22.02.2019 before the trial court, whereupon his statement under section 242 CrPC was ordered to be recorded on next date i.e. 25.03.2019.

16. Further perusal of the record reveals that the petitioner after entering appearance before the trial court on 22.02.2019 filed two revision petitions on 23.04.2019 before the revisional court against the order dated 17.12.2018 passed by the trial court in both complaints being revision Nos. 19/criminal revision and the said revision petitions came to be rejected by the revisional court vide order dated 25.05.2019 upholding the order dated 17.12.2018 passed by the trial court.

It is after the passing of the orders passed by the revisional court, on 25.05.2019 in the revision petitions supra, the petitioner filed the instant petitions.

17. Counsel for the petitioner while advancing the arguments reiterated the contentions raised and grounds urged in the petitions and prayed for grant of the reliefs as prayed in the petitions.

18. Per contra counsel for respondent controverted the contentions raised and grounds urged by the counsel for petitioner and sought dismissal of the instant petitions on the premise that same are aimed at to frustrate and forestall legitimate prosecution of the complaints filed against the petitioner and argued that the filing of the instant petitions in fact is an abuse of process of court. Learned counsel for the respondent while refuting and denying the factual contentions raised in the petition defended the institution of the complaints in as much as commencement of proceedings thereon as also the orders passed by both the trial court as well as revisional court. Learned counsel for respondent further argued that the petitioner is in law precluded from raising the issues in the instant petitions as he had raised the same in earlier 561-A petitions being petition No. 650/2017 and 651/2017 decided by this court vide order dated 31.05.2018 where under order dated 16.03.2016 alone came to be set aside essentially therefore, refusing all other reliefs which had been prayed therein by the petitioner.

19. What emerges from above is that, the petitioner in the instant petitions in essence has thrown challenge to the maintainability of the complaints supra, proceedings conducted thereon by the trial court including order of cognizance and summoning passed by the trial court dated 17.12.2018, on the grounds which had been essentially urged in earlier 561-A petitions being 650/2017 and 651/2017 additionally on the grounds that the trial court erred while passing orders in the complaints w.e.f. 09.06.2018 up to the passing of order dated 17.12.2018, while summoning the accused / petitioner before taking cognizance after receipt of record from this court upon disposal of above 561-A petitions and that the fresh order of cognizance dated 17.12.2018 has been passed against the bar contained in section 142 (1)(b) of NI Act and that the trial court did not provide an opportunity of being heard to the petitioner at the time of passing of cognizance order dated 17.12.2018 resulting into serious prejudice and denial of justice to the petitioner and that the trial court in the process reviewed its earlier orders without there being any provision of review provided under sections 202-204 CrPC and that the order of trial court dated 17.12.2018 has been passed against the principles laid down in 2004 (7) SCC 338 and that the cheques in question were lying with the petitioner as a security which the petitioner misused and that the matter involved in the complaints is of civil nature. What emerges further is that the petitioner has questioned the orders of revisional court dated 25.09.2019 on the premise that the revisional court passed the same while making perverse and erroneous observations about the conduct of proceedings by the trial court and in the process passed illegal order and did not exercise jurisdiction vested in it.

20. Before dealing with the issues raised in the instant petitions it would be

appropriate and advantageous to advert to the legal provisions relevant and germane to the controversy: -

"Section 138 of the Negotiable Instruments Act provides that dishonor of a cheque for insufficiency of funds in the bank account, etc., is an offence punishable 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.

Section 142 of the NI Act provides that notwithstanding anything contained in the Code, no court shall take cognizance of any offence punishable under Section 138 except upon a complaint in writing made by the payee (or where it has been endorsed in favour of another, the holder in due course) of the cheque.

"Section 190 of the Code enumerates the various modes of taking cognizance of offences by the Magistrates. It provides for taking cognizance upon receiving a complaint of facts which constitute such offence.

Section 200 of the Code relates to examination of the complainant, relevant portion of which reads as under:

"200. Examination of complainant_ A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) If a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint; or

(b) ****"

21. In the light of the aforesaid legal provisions coupled with Paras 15 and 16 of the Judgment of the Apex Court reported in 2009 (1) SCC 407 titled as "National Small Industries Corporation Ltd., vs. State (NCT of Delhi) & Ors." it is seen that Section 138 of NI Act mandates that the payee alone whether a corporeal person or an incorporeal person, shall be the complainant. Section 200 of the code contemplates only a corporeal person being a complainant and it requires the examination of the complainant and the sworn statement being signed by the complainant. If section 142 of NI Act and section 200 of the code are read literally, the result will be: (a) the complainant should be the payee of the cheque and (b), the complainant should be examined before issuing process and the complainant's signature should be obtained on the deposition. Therefore, if the payee is a company, an incorporeal body, the said incorporeal body can alone be the company to be represented by an employee or representative on its behalf whereby, the company becomes a de jure complainant and its representative, representing in the criminal proceedings becomes the defacto

complainant.

22. Now keeping in view the aforesaid legal position and while adverting to the issues involved in the petitions what transpires is that the complaints in question though initially have had been filed with a defect of not mentioning name of defacto complainant -the Managing Director of the Company namely Rajat Chadha yet the said defect had been allowed to be removed by the trial court vide order dated 14.08.2017 and the said order though questioned by the petitioner in earlier 561-A petitions was not set aside by this court meaning thereby that the complaints in question are very well competent. Similarly the issue raised by the petitioner about taking on record of preliminary statement original affidavit of the complainant attested by oath commissioner pursuant to the order of trial court dated 01.07.2017, which order too though challenged in the earlier 561-A petitions was not set aside by this court. The said orders thus assumed finality and in law, could not be re-agitated in the instant petitions. Although the trial court while considering the matter upon receiving record back from this Court seemingly has erred initially while summoning the petitioner/ accused pursuant to orders dated 09.06.2018, 30.06.2018 and 21.07.2018, however, subsequently corrected the conducting of proceedings upon recording preliminary statement of the respondent/ complainant and upon passing fresh cognizance and summoning order dated 17.12.2018 notwithstanding the earlier summoning of the petitioner herein. The aforesaid errors committed by the trial Court by no sense of imagination could said to be fatal to the entire proceedings, in that, even if same or treated nullity or are set aside the further proceedings subsequently conducted by the trial court would not get affected. Therefore, complaining of suffering a prejudice or injustice on this account by the petitioner is insignificant and legally of no consequence. Furthermore the petitioner cannot question the order of cognizance or else proceedings conducted by the trial court after receipt of record back from this court on account of denial of hearing is also legally not sustainable, since hearing of accused at the time of recording of preliminary statement of the complainant, passing of cognizance order as also before issuance of process is not, in law, conceived of. Reference and reliance in this regard is placed on judgement of this court reported in 2019 (2) JKJ (HC) 36 titled as Manzoor Ahmad Burza Vs. Gulzar Enterprises, wherein at para 22 and 23 following is noticed: -

22. "Even otherwise the purpose of providing for a speedier remedy against dishonored cheques would loose its efficacy, in case, the accused were to be heard before taking cognizance of a complaint, for such a course would lead to a full-fledged enquiry before the issue of process, which may frustrate the very purpose for which Section 138 of the Negotiable Instruments Act has been incorporated as penal offence for dishonor of cheques.

23. "Not only that, the position in law being settled that an accused is not entitled to hearing before issuance of process, no opportunity of hearing to him at a stage prior thereto may be conceived of. Yet another reason which justifies

the above view is that an accused does not come into picture unless the process was issued against him and even after the issuance of process, he has no right to question the legality or otherwise of the process issued by the Court, before the Magistrate, unless the case reaches the stage, where he would be required to enter upon the defence. It is at this stage that he would be at liberty to take all such defences, as may be available to him to defeat his prosecution and punishment. While dealing with cases under the Penal laws, the procedure prescribed for the trial thereof, takes care of the principles of Natural Justice and no further additional right, not contemplated by the procedure, may, therefore, be warranted, for such a course would amount to rewriting the procedure prescribed by law for trial of the Penal offences.

23. Next while testing the legality of order of cognizance and summoning dated 17.12.2018, passed by the trial court and upheld by the revisional court vide its order dated 25.05.2019, it would be advantageous to refer to judgement of Apex Court reported in "2008 (2) SCC 492 titled as S. K. Sinha Chief Enforcement Officer Vs. Videocon International Limited" wherein at paras 19 & 20, it is noticed as under: -

19. "The expression "cognizance" has not been defined in the code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. "Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance."

In the light of Apex Court judgment supra, a bear perusal of orders of cognizance and summoning dated 17.12.2018 passed by the trial court would manifestly demonstrate that the trial court has passed the same validly and legally, upon hearing the learned counsel for the complainant and after taking into account the contents of the complaint material attached therewith as also pre-summoning statement of the complainant. The trial court validly appears to have proceeded in the matter in tune with chapters XIV (sections 190-199 CrPC) relating to the conditions requisite for initiation of proceedings, chapter XV (section 200-203) relating to complaints to magistrates as also chapter XVI (section 204-205 E) relating to commencement of proceedings before the magistrates.

24. Next while considering the grounds of challenge urged by the petitioner against the proceedings initiated and commenced by the trial court including passing of order dated 17.12.2018 viz. that the trial court proceeded contrary to section 202-204 CrPC in as much as in violation of judgement of Apex Court reported in 2004 (7) SCC 338 is without any substance, in that, the trial court seemingly has not exercised any review powers as is alleged in the petition while recording preliminary statement of the accused and passing of order dated 17.12.2018 after prior erred summoning of the accused / respondent herein, firstly because no such power is contained therein the said provisions and secondly that the trial court corrected conducting of proceedings upon recording of preliminary statement of complainant on 12.12.2018 and thereafter as well notwithstanding earlier erred summoning of the accused/ petitioner. The errors committed by the trial court while summoning the petitioner / accused on receipt of record from this court upon disposal of earlier 561-A petitions cannot be said to be fatal or incurable errors causing prejudice of any nature or failure of justice to the petitioner/ accused. Interestingly the petitioner/ accused did not raise any objection to his said summoning, prior to the passing of order dated 17.12.2018.

In this view of the matter Judgement of Apex Court supra relied upon by the petitioner does not lend any support to his case and the grounds supra urged by the petitioner are as such legally not tenable.

25. Risking repetition, while considering the factual issues referred to in the preceding paras raised and agitated by the petitioner that his blank cheques were lying with the complainant / respondent herein and that the complainant misused the said cheques malafidly retaining the same after settlement of all payments and that there was no legally enforceable debt or liability of the complainant against the petitioner and that the matter is of civil nature based on contracts of commercial transaction may not be even looked into in the instant petitions for the sole and simple reason that the said issues have had been raised by the petitioner in the earlier 561-A petitions supra and that this court did not render any decision on the said issues and as such in law, same cannot be re-agitated in the proceedings under section 482 in the instant petitions. The said issues otherwise can conveniently be dealt with by the trial court in the complaints in question.

26. Again risking repetition, next while considering the issues raised by the petitioner in the instant petitions that the fresh order passed in the complaints in question under section 138 is barred by section 142 (1)(b) besides being based on invalid, impermissible, incompetent complaint is also without any substance and legally unsustainable, in that, under clause (b) of section 142 (1), of NI Act, a cognizance upon a complaint is forbidden by any court if not made within one month from the date of cause of action arises. Perusal of the record reveal that the complaints came to be instituted and entertained by the trial court on 16.03.2016 after the complainant spelt out specifically therein the accrual of cause of action in his favour for institution of complaints. In law, in filing of

complaint under section 138 of NI Act, the date of filing of complaint is the relevant date for considering the question of limitation and not the date of taking cognizance or issuance of process by the court. This court while deciding earlier 561-A petitions did not render any decision on the maintainability of the complaints or else institution and entertaining of the same by the trial court, therefore, the date of filing of the complaints viz 16.03.2016 would be deemed to be the relevant date for considering the question of limitation. The contention of the petitioner in this regard is without any substance and turned down.

27. Lastly while dealing with the objections raised by the learned counsel for the respondent regarding maintainability of the petitions invoking inherent power under section 482 CrPC, by the petitioner, it would be advantageous to refer to "The Jantal Dal Vs. H. S. Chowdhary & Ors, reported in AIR 1993 SC 892" where under in para 135, it has been noticed as follows:

135. "This inherent power conferred by S.482 of the Code should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to the cases in which the High Court will exercise its extraordinary jurisdiction of quashing the, proceedings at any stage. This court in State of Haryana V. Ch.Bhajan Lal, 1990 (3) Supp SCR 259 to which both of us were parties have dealt with this question at length and enunciated the law listing out the circumstances under which the High Court can exercise its jurisdiction in quashing proceedings. We do not, therefore, think it necessary in the present case to extensively deal with the import and intendment of the powers under Ss.397,401 and 482 of the code."

28. Viewed thus in the above context, this court is of the view that in the instant cases exercise of inherent power is not warranted. Resultantly, the petitions in hand are found to be without any merit liable to be dismissed, and are accordingly dismissed.

29. Dismissed along with all connected CrIM(s).