

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 454 of 2015

1. Anant Shet, S/o. Shankar Shet, Aged About 55 Years, R/O. Flat No. - A - 503, At Classic, Vidhansabha Road, Raipur Chhattisgarh

---- **Petitioner**

Versus

1. Shriram Sales, Through Prop. Manik Goswami, S/O. Amar Krishna Goswami, C/O Ashis Goswami, Advocate Chamber, Shop No. 8 to 1, Beside Post Office, Shankar Nagar, Tehsil & Distt. Raipur, Chhattisgarh. R/O E-8 & E-9, Body Care Line, Near Pink City, Gayatri Nagar, Tehsil & Distt. Raipur (Chhattisgarh)

---- **Respondent**

For Petitioner	:	Mr. Raza Ali, Advocate
For Respondent	:	Mr. Kshitij Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

30/09/2015

1. Challenge in this petition is to the order dated 06.05.2015, passed in Criminal Revision No.239/2013, passed by the Fourth Additional Sessions Judge, Raipur, whereby the order dated 03.05.2013, passed by the Judicial Magistrate First Class, Raipur in a case of Anant Shet Vs. Shriram Sales, whereby a complaint U/s.138 of the Negotiable Instrument Act was dismissed, was affirmed. The dismissal of the complaint touches upon the limitation and it was held that complaint filed under Section 138 of the Negotiable Instrument Act was barred by time.

2. Briefly stated facts of this case are that a complaint under Section 138 of the Negotiable Instrument Act was filed before the Judicial Magistrate First Class, Raipur by the petitioner on 16.04.2013. The said petition was dismissed as barred by time by the Court of Judicial Magistrate First Class, Raipur, which was further challenged in the revision and the Revisional Court too, dismissed the same.
3. The basis of filing the complaint under Section 138 of N.I. Act was that on 15.07.2012, the cheque was issued by the respondent in favour of the complainant/petitioner, which was dishonoured on 17.07.2012. Subsequently, a notice under Section 138 of the Negotiable Instrument Act, making demand of amount was made on 13.03.2013 after delay of about more than 7 months. However, the amount having not been paid, a complaint under Section 138 of the Negotiable Instrument Act was filed on 16.04.2013.
4. The counsel for the petitioner Shri Raza Ali would submit that alongwith the complaint under Section 138, an application to condone the delay explaining the reason under Section 142 (b) of the Negotiable Instrument Act was filed, whereby the delay caused in filing the complaint was properly explained. It is submitted that the delay having been explained properly, the complaint filed under Section 138 of the Negotiable Instrument Act could not have been dismissed in limine. Consequently, miscarriage of justice has caused.
5. Per contra Mr. Kshitij Sharma, counsel appearing on behalf of the respondent would submit that it is a case where the cause of action itself was barred. He would further submit that after dishonour of the cheque on 17.07.2012, the notice was served on 13.03.2013, whereby it failed to comply the time limitation as prescribed under sub-clause

(b) of Section 138 of the Negotiable Instrument Act. It is contented that, thereby the cause of action had not accrued according to the statute. He further submits that unless and until the notice is served within statutory period, the offence is not committed for dishonour of cheque within the meaning of Section 138 of the Negotiable Instrument Act. It is further submitted that so far as Section 142(b) and the proviso which is amended allows filing of complaint after the cause of action has accrued under Section 138(c). It is therefore, submitted that in this case, the notice having been served after statutory period of receipt of dishonour of cheque, the offence under Section 138 B could not be said to have committed. Therefore, the order is well merited which do not call for any interference.

6. I have heard the learned counsel for the parties at length and perused the documents.
7. Indisputably in this case, the cheque was of 15.07.2012, which was dishonoured on 17.07.2012. The notice of dishonour of the cheque was given on 13.03.2013, thereby there was a delay of 7 months. Since the complaint pertains to Section 138 of Negotiable Instrument Act, therefore, the proviso clause of 138 of Negotiable Instrument Act is relevant, which is reproduced as under :-

“138. x x x x x

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.”

8. Recently in case of ***Dashrath Rupsingh Rathod Vs. State of Maharashtra & Anr***, reported in ***AIR 2014 SC 3519***, the Hon'ble Supreme Court has laid down that filing of the complaint under Section 138 of the Negotiable Instrument Act defers the time to file complaint. Paragraph 56 of the judgment states as under:-

“56. To sum up:

(i) An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.

(ii) Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date of cause of action accrues to such payee or holder under clause (c) of proviso to Section 138.

(iii) The cause of action to file a complaint accrues to a complainant accrues to a complainant/payee/holder of a cheque in due course if.

(a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue.

(b) if the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque and

(c) if the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.

(iv) The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.

(v) The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the Court till such time cause of action in terms of clause (c) of proviso accrues to the complainant.

(vi) Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonoured.

(vii) x x x x x x

9. In light of the aforesaid principles and in mandate of the section, if the facts are calculated in this case, the dishonour of cheque was received by the complainant on 17.07.2012 and according the proviso (b) of Section 138, no notice was served within 30 days from the receipt of the information and the notice was served on 13.03.2013. Therefore, the notice having been served beyond the period of 30 days, it can not be stated that cause of action accrued in terms of Section 138(b). Section 142(b), the proviso clause, which is inserted by the Act of 55 of

2002, which was amended on 06.02.2003 speaks that the complaint can be filed if the delay is properly explained after cause of action accrues U/s.138 (c). So specifically it points out of cause of action which accrues under clause (c), which is after the clause (b) of the Section 138. Consequently, if the notice is not served within the statutory period of 30 days, no cause of action could have been accrued in terms of clause (c).

10. In a result it can not be stated that the Court has acted beyond its jurisdiction to dismiss the complaint at the threshold. Consequently, the petition has no merit and is dismissed accordingly.

Sd/-
(Goutam Bhaduri)
Judge