

IN THE HIGH COURT OF BOMBAY AT GOA.

Criminal Revision Application 58 of 2015

Mr. Franco Berne Martins
major of age, Indian National,
r/H. No.590/3-A. Bandfoli,
Chinchinim, Salcete, Goa.

..Petitioner

Versus

(1) MRS. ARCHANA PAI KUDCHADKAR,
major of age, Indian National, r/o Near Dr.
Rebello Hospital, Madel,
Margao, Goa.

(2) STATE
through the Public Prosecutor,
High Court, Panaji, Goa.

Respondents

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Mr. Nitin Sardessai, Sr. Advocate with Mr. L.
Raghunandan, Advocate for the appellant.
Mr. Menino Teles, Advocate for respondent no.1.

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CORAM : K.L. WADANE, J.

Judgment reserved on 22/9/2015

Judgment pronounced on 30/09/2015.

Judgment :

Heard Shri Mr. Nitin Sardessai, learned Senior
counsel with Mr. L. Raghunandan, learned Advocate
appearing for the appellant and Mr. Menino Teles, learned
counsel appearing for the respondent no.1.

2] The present Criminal Revision Application is filed by the petitioner seeking to quash and set aside the order passed by the learned Additional Sessions Judge, South Goa, in Criminal Revision Application No.20/2014 dated 2.5.2015 by which the learned Additional Sessions Judge has set aside the order passed by the Judicial Magistrate, First Class dated 5.12.2013 by which the learned Magistrate issued process for the offence punishable under Section 138 of the Negotiable Instruments Act against the respondent no.1.

3] The brief facts of the case may be stated as follows:-

The complainant-petitioner filed complaint against the respondent no.1 for the offence punishable under Section 138 of the Negotiable Instruments Act bearing Criminal Case No. 132/2013.

4] The respondent no.1. Issued a cheque in favour of the petitioner for an amount of Rs. 15 lakhs. It was deposited in the bank. The same was returned unpaid with

a remark "payment stopped by the drawer". The petitioner sent a demand notice, however, the respondent no.1 failed to make the payment. At the time of filing of the complaint, the bank of the petitioner has given intimation of dishonour of cheque "on 30.4.2013". By way of amendment complainant pleaded that such intimation was given "on 10.5.2013".

5] According to the petitioner, it was an typographical mistake and therefore, the petitioner filed an application for amendment to correct typographical mistake. Accordingly, it was allowed and the necessary amendment was carried out. Thereafter the learned Judicial Magistrate, after hearing the petitioner and based on the material on record and the statement under Section 20 of the Code of Criminal Procedure issued process against the respondent no.1 for the offence punishable under Section 138 of the Negotiable Instruments Act.

6] The respondent no.1, being aggrieved with the order dated 5.12.2013, filed Criminal Revision Application No.20/2014. The learned Additional Sessions Judge, upon

hearing both sides, was pleased to allow the criminal revision application, on the ground that the demand notice was not issued within the statutory period of 30 days and secondly, on the ground that the complaint was not signed by the complainant at the time of its presentation. Consequently, the respondent no.1 was discharged by the order dated 2.5.2015. Being aggrieved by the judgment and order dated 2.5.2015 the petitioner preferred the present criminal revision application.

7] I have heard the arguments of Mr. Sardessai, the learned Senior Advocate, appearing for the petitioner and Mr. Teles, the learned Advocate appearing for the respondent no.1.

8] During the course of the arguments, Mr. Sardessai, the learned Senior counsel, has argued that the unsigned complaint under Section 138 of the Negotiable Instruments Act is maintainable and the signature of the complainant is necessary at the time of its verification and statement under Section 20 of the Code of Criminal Procedure.

9] As against this, Mr. Teles, the learned counsel appearing for the respondent no.1, has argued that unsigned complaint for the offence punishable under Section 138 of the Negotiable Instruments Act is not maintainable not maintainable as it is not the complaint in the eyes of law.

10] Considering the rival submissions of both the sides, a short point is involved in the present matter is: whether unsigned complaint under Section 138 of the Negotiable Instruments Act is maintainable or otherwise? Before going to discuss the above aspect, it is material to note the first ground on which the order of the Judicial Magistrate First Class is set aside appears to be premature, because, by way of amendment, the complainant alleged that intimation of dishonour of cheque was given on 10.5.2013 instead of 30.4.2013. On which date, the intimation was given, can only be determined after the evidence of the parties to the litigation is over and the witnesses are tested after cross-examination. Therefore, at this stage, it is premature to say the date on which the

intimation of dishonour of cheque was given to the complainant.

11] Mr. Teles, the learned counsel appearing for the respondent no.1 has relied upon the observations in the case of **2009 ALL MR (Cri) 751** (Mr. Roy Joseph Creado and Ors. Vs. SK. Tamisuddin s/o Late Sk. Nazir Ahmed & Ors). The Apex Court observed in paragraph 10 thus:

"Para 10 :In the above backdrop, definition of the word "complaint" as enumerated in [Section 2\(d\)](#) of the Cr.P.C. may be noticed. The word "complaint" means a written or oral accusation made to Judicial Magistrate to start appropriate proceedings against a known or unknown person as per provisions of the Code. It does not include report given to Police (F.I.R.). So, the complaint may be oral. The purpose of complaint is to move the Judicial Magistrate for setting Criminal Law in motion. However, [Section 142](#) of the Negotiable Instruments Act specifically deals with the expression "complaint" filed under the [N.I. Act](#). A plain reading of [Section 142](#) of the N.I. Act shows that the cognizance of any offence punishable Under [Section 138](#) of the N.I. Act cannot be taken unless there is complaint, in writing made by the payee or by holder of the cheque

in due course. Section 142 commences with non-obstante clause. Therefore, it supersedes the general definition of the word "complaint" as given in Section 2(d) of the Code of Criminal Procedure. The legal requirements of a valid complaint for the purpose of N.I. Act are:

- (i) There has to be a complaint in writing regarding commission of offence;*
- (ii) The complaint must be made by the payee or one who is holder of the cheque in due course;*
- (iii) The allegations in the complaint shall make out a prima facie case of cognizable offence. "*

12] I have gone through the facts and the observations of the cited authority in which the complaint was signed by the power of attorney of the complainant and obviously the complaint was not signed and verified by the complainant.

13] As against this, Mr. Sardesai, the learned Senior Counsel relied upon the observations reported in (2012)13 SCC 1 (Indra Kumar Patodia and another Vs. Reliance Industries Limited and others). The Apex Court has observed

thus:

"21. In the case on hand, the complaint was presented in person on June 3, 1998 and on the direction by the Magistrate, the complaint was verified on July 30, 1998 and duly signed by the authorized officer of the Company-the complainant. As rightly pointed out by the Division Bench, no prejudice has been caused to the accused for non-signing the complaint. The statement made on oath and signed by the complainant safeguards the interest of the accused. In view of the same, we hold that the requirements of [Section 142\(a\)](#) of the Act is that the complaint must necessarily be in writing and the complaint can be presented by the payee or holder in due course of the cheque and it need not be signed by the complainant. In other words, if the legislature intended that the complaint under the Act, apart from being in writing, is also required to be signed by the complainant, the legislature would have used different language and inserted the same at the appropriate place. In our opinion, the correct interpretation would be that the complaint under [Section 142\(a\)](#) of the Act requires to be in writing as at the time of taking cognizance, the Magistrate will examine the complainant on oath and the verification statement will be signed by the complainant. "

"25. In the light of the above discussion, taking note of various provisions of the Act and [the Code](#) which we have adverted above, we hold that the complaint under Section 138 of the Act without signature is maintainable when such complaint is verified by the complainant and the process is issued by the Magistrate after due verification. The prosecution of such complaint is maintainable and we agree with the conclusion arrived at by the Division Bench of the High Court. Consequently, both the appeals fail and are dismissed. "

14] I have gone through the the observations made by the Hon'ble Apex Court in the aforesaid authority (supra). The present case being identical and therefore, the case of the applicant is directly covered by the aforesaid judgment of the Apex Court. Hence, in view of the observations of the above cited authorities, the revision application is allowed. The order passed by the Additional Sessions Judge, Margon-Goa in Criminal Revision Application No.20/2014 dated 2.5.2015 is hereby quashed and set aside and the order passed by the learned Judicial Magistrate First Class Margao Goa in Criminal case No. 132/2013 dated 5.12.2013 is restored.

15] Criminal Revision Application is allowed and disposed of accordingly. There shall be no order as to costs.

K.L.WADANE, J

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