

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO.4255 OF 2014**

M/s. Renaissance Corporation Ltd. &  
Anr.

...Petitioner

Versus

The State of Maharashtra & Anr.

...Respondents

.....

Mr. Sunil D'souza for the Petitioner.

Smt. Namita Shirke h/f. Mr. J.J. Thakkar for the Respondent  
No.2.

Ms R.V. Newton, APP for Respondent No.1-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.**

**DATE : 20<sup>th</sup> OCTOBER, 2015.**

**P. C. :**

By this petition filed under article 227 of the Constitution of India and section 482 of the Criminal Procedure Code, the Petitioner herein (original accused) in C.C. No.12003/SS/2008 has challenged the order dated 16<sup>th</sup> January, 2014, whereby the learned Magistrate has rejected his contention that the complaint under section 138 of the Negotiable Instruments Act was premature and is not maintainable.

2. Heard Mr. Sunil D'souza, the learned counsel for the Petitioner. He has submitted that the cause of action for filing the

complaint had arisen on 22<sup>nd</sup> November, 2008 whereas the complaint was filed on 19<sup>th</sup> November, 2008, which was much before the cause of action. Relying upon the judgment of the Hon'ble Supreme Court in Criminal Appeal No.605 of 2002 he submits that the complaint is not maintainable.

3. Smt. Namita Shirke, the learned counsel for the Respondent No.2 concedes that the complaint was filed before the accrual of cause of action. She, however, submits that opportunity may be given to the complainant to file a fresh complaint alongwith application for condonation of delay.

4. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties. The records reveal that the Respondent No.2-complainant, herein had filed a complaint under section 138 of the Negotiable Instruments Act for dishonour of cheque bearing No.309933 dated 1<sup>st</sup> October, 2008. The averments made in the complaint reveal that statutory notice dated 2<sup>nd</sup> November, 2008 was dispatched on 3<sup>rd</sup> November, 2008 and the same was returned unclaimed on 6<sup>th</sup> November, 2008. The period of 15 days therefore had elapsed on 21<sup>st</sup> November, 2008. Resultantly, the cause of action had arisen on 22<sup>nd</sup> November, 2008. It is not in dispute that

the complaint was filed on 19<sup>th</sup> November, 2008 which was before the expiry of 15 days from the date the notice which was deemed to have been served on 6.11.2008.

5. In the case of **Yogendra Pratap Singh Vs. Savitri Pandey & Anr. in Criminal Appeal No.605 of 2012** the Hon'ble Apex Court has held that:-

*“any complaint 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 law. It is not the question of prematurity of the complaint where it is filed before 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”.*

6. In the light of the principles laid down by the Apex Court, the learned Magistrate was not entitled to take cognizance since the complaint itself was filed before the expiry of 15 days from the date of the receipt of the notice by the drawer of the cheque.

7. The complaint under section 138 of the Negotiable Instruments Act is to be filed within one month from the date on which the cause of action has arisen. Proviso to section 142 (b) empowers the Court to take cognizance of the complaint after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

8. Considering the legal provision and also the principles laid down by the Hon'ble Apex Court in the case of **Yogendra Pratap Singh Vs. Savitri Pandey & Anr. in Criminal Appeal No.605 of 2012**, the Respondent No.2 is entitled to file a fresh complaint alongwith an application for condonation of delay within one month's time from the date of the order. The learned Magistrate shall consider such application for condonation of delay on its own merits and proceed with the matter in accordance with the law.

9. The writ petition stands disposed of.

(ANUJA PRABHUDESSAI, J.)