

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1353 of 2016**

- Babar Hussain S/o Late Mohd. Firoj, Aged About 42 Years R/o Balaji Ward Jagdalpur, District Bastar, Chhattisgarh.

---- Petitioner**Versus**

- Arjun Singh Netam S/o Late Ganga Singh Netam Aged About 20 Years R/o Near, Maharani Hospital, Dulhani Medical Store, Jagdalpur, District Bastar, Chhattisgarh.

---- Respondent

For Petitioner

Mr. P.K. Patel, Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****14.12.2016**

1. The present Cr.M.P. has been preferred assailing the order dated 28.09.2016 passed by the Chief Judicial Magistrate, Bastar in Criminal Case No. 1915/2011 whereby the complaint preferred by the petitioner under Section 138 of the Negotiable Instrument Act (for short 'the N.I. Act') got dismissed on account of it being filed beyond the period of limitation.
2. The relevant fact for adjudication of the present case is that the Respondent accused in the present Petition had issued a cheque in favour of the present Petitioner for an amount of Rs. 5,00,000/- vide cheque No. 324398 dated 11.01.2011 drawn on the "Union Bank of India".

3. The Petitioner presented the said cheque for realization in his bank on 03.03.2011. The present Petitioner received intimation on 04.03.2011 that the cheque by the Respondent accused has got dishonored on account of insufficient fund on 03.03.2011. On the very next day legal notice was issued to the Respondent accused and since there was no response from the Respondent accused to the said notice the cheque was presented for realization again in the bank on 28.05.2011 wherein again the cheque got dishonoured on account of insufficient fund. Thereafter, again notice was issued on 01.06.2011 and since there was no positive response from the Respondent accused a complaint under Section 138 of the N.I. Act was filed before the Court on 30.06.2011. The Court below initially registered the case as Criminal Case No. 1915/2011 and finally vide its order dated 28.09.2016 rejected the case on the ground that the complaint has been filed beyond the prescribed period of limitation.
4. It is this judgment which is under challenge in the present Cr.M.P. and the Petitioner complainant seeks leave to appeal to challenge the impugned judgment.
5. Learned Counsel for the Petitioner submits that so far as the service of notice dated 04.03.2011 is concerned there is no proof whatsoever whether the notice have been served upon the accused or not. Therefore it has to be presumed that the notice which has been issued on 01.06.2011 to be the service which has been effected upon the Respondent accused and therefore from the date of issuance of the notice dated 01.06.2011 the complaint case has been filed within the prescribed period of limitation under the N.I. Act.

Therefore, the Court below was not justified in rejecting the complaint case holding to be barred by limitation.

6. Having considered the rival contention put forth by the Counsel for the Petitioner and on perusal of the record what clearly reflects is the fact that admittedly the cheque for the first time was presented for realization on 03.03.2011 but it was intimated by the Bank that the cheque is dishonoured on account of insufficient fund. On the next day on 04.03.2011 a legal notice was issued to the Respondent accused against the dishonouring of cheque.
7. At this juncture it would be relevant to refer paragraph No. 7 of the complaint filed by the present Petitioner before the Court below wherein in a very categorical term it is mentioned as under :-

“7. यह कि परिवादी द्वारा आरोपी को दिनांक ४-३-११ को नोटिस भी प्रेषित किया था किन्तु आरोपी द्वारा किसी तरह का नोटिस का जवाब नहीं दिया गया और न ही परिवादी से व्यक्तिशः मिलकर भी कोई जानकारी ही दी गई।”

8. Thereafter, as per the pleading of the Petitioner complainant himself he had again put the cheque for clearance on 28.05.2011 which also got dishonoured on account of the insufficient fund and intimation of which was received on 28.05.2011. Again on the intimation he had for the second time issued a legal notice on 01.06.2011 which also was not replied by the Respondent as mentioned in the complaint itself in paragraph 8 of the complaint under Section 138 of the N.I. Act. which for ready reference is reproduced herein :-

“8. यह कि परिवादी द्वारा पुनः दिनांक २८.५.२०११ को पुनः चेक यूनियन बैंक आफ इण्डिया शाखा जगदलपुर में चेक में अंकित राशि का आहरण हेतु प्रस्तुत किये परन्तु पुनः बैंक द्वारा यही जवाब दिया गया कि खाता क्रमांक ४३५४७ में कोई राशि जमा नहीं है। परिवादी द्वारा दिनांक १-६-२०११ को आरोपी को नोटिस प्रेषित किया गया। किन्तु आरोपी को नोटिस प्राप्त होने के बाद भी आरोपी द्वारा नोटिस का कोई जवाब नहीं दिया गया।”

9. A perusal of the pleading of the complainant by itself emphatically makes it clear that the Petitioner complainant had for the first time issued legal notice on 04.03.2011 and the Respondent did not show any keen interest in honouring the cheque inspite of notice. Therefore, for all practical purposes cause of action for instituting case under Section 138 of the N.I. Act would be presumed to have arisen on 04.03.2011 itself and therefore, for filing of the complaint limitation would be started from 04.03.2011 itself.
10. The Supreme Court in series of its decision by now have pointedly held that the repeated issuance of notice on dishonouring of cheque at the first instant would not give rise to the fresh cause of action for the purpose of filing of the complaint.
11. The opinion of this Court stands fortified from the decision of the Supreme Court in the case of **Prem Chand Vijay Kumar v. Yashpal Singh and Another** [2005 (4) SCC 417] wherein in paragraph Nos. 8 to 11 the Supreme Court has held as under :

“8. Clause (a) of the proviso to Section 138 does not put

any embargo upon the payee to successively present a dishonoured cheque during the period of its validity. This apart, in the course of business transactions it is not uncommon for a cheque being returned due to insufficient funds or similar such reasons and being presented again by the payee after sometime, on his own volition or at the request of the drawer, in expectation that it would be encashed. The primary interest of the payee is to get his money and not prosecution of the drawer, recourse to which, normally, is taken out of compulsion and not choice. On each presentation of the cheque and its dishonour, a fresh right-and not a cause of action - accrues in his favour. He may, therefore, without taking pre-emptory action in exercise of his such right under clause (b) of Section 138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque.

9. But once he gives a notice under clause (b) of Section 138, he forfeits such right in case of failure of the drawer to pay the money within the stipulated time, he would be liable for offence and the cause of action for filing the complaint will arise.

10. In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908 (in short 'CPC') "cause of action" means every fact which it is necessary to establish to support a right or obtain a judgment. Viewed in that context, the following facts are required to be proved to successfully prosecute the drawer for an offence under Section 138 of the Act:

(a) that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured;

(b) that the cheque was presented within the prescribed period;

(c) that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and

(d) that the drawer failed to make the payment within 15 days of the receipt of the notice.

Proceeding on the basis of the generic meaning of the term "cause of action", certainly each of the above facts would constitute a part of the cause of action but clause (b) of Section 142 gives it a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and that is the failure to make the payment within 15 days from the date of the receipt of the notice. A combined reading of Sections 138 and 142 makes it clear that cause of action is to be reckoned accordingly. The combined reading of the above two sections of the Act leaves no room for doubt that cause of action within the meaning of Section 142(C) arises - and can arise - only once.

11. The period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawer expires.”

12. If we look into the contents of the complaint and the order passed by the Court below it would clearly reflect that in the instant also from the pleading made by the complainant in itself makes it clear that the cheque for the first time was dishonoured on 03.03.2011 and legal notice was issued to the Respondent on 04.03.2011. Therefore, in view of the authoritative decision of the Supreme Court in the aforementioned judgment for all practical purposes the cause of action for the purpose of filing a case under the provisions of the N.I. Act so far as the Petitioner's case is concerned would be 04.03.2011 and not any subsequent dates.

13. Accordingly, this Court is of the opinion that the Court below has not committed any error of law in rejecting the complaint filed by the

Petitioner barred by limitation.

14. Accordingly, the since the complaint was filed beyond the period of limitation, the present Cr.M.P. does not have any merits and therefore, the present Cr.M.P. deserves to be and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
JUDGE