

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRMP No. 1186 of 2016

Anand Wadhvani S/o Late Shri M.L. Wadhvani Aged About 44 Years
 R/o House No. 3-7, Om Kutir, Jeevan Vihar Colony, Telibandha,
 District Raipur, Chhattisgarh.

---- **Petitioner**

Versus

Hari Om Agrawal S/o Shri Asit Kumar Agrawal Aged About 42 Years
 R/o First Floor, House No. 709/ 37, Ahmadji Colony, Raipur, District
 Raipur, Chhattisgarh.

---- **Respondent**

For the Petitioner	:	Shri Shobhit Koshta, Advocate.
For the Respondent	:	Shri Rakesh Thakur, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

ORDER

17.07.2017

1. Heard.
2. This petition has been brought under Section 482 of the Code of Criminal Procedure with a prayer to quash the proceedings against the petitioner in Criminal Complaint Case No. 24277 of 2014.
3. Learned counsel for the petitioner submits that cognizance has been taken by the trial Court for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act, 1881) on the basis of the complaint filed by the respondent. The complaint is legally not maintainable. As per the statement and the complaint itself, the information of dishonour of cheque drawn by the petitioner in favour of the respondent, of Axis Bank, Pachpedinaka, Raipur was received on 27.8.2014 whereas the notice as per

the requirement of Section 138 sub-section (b) of the Act, 1881 was dispatched by the respondent on 29.9.2014 which was clearly dispatched beyond the period of 30 days prescribed under the provision further also submitted that complaint is barred by limitation as it was filed beyond limitation as provided under Section 142(b) of the Act, 1881.

4. Reliance has been placed on the judgment of the Apex Court in the case of **Dashrath Rupsingh Rathod vs. State of Maharashtra and Anr.** reported in **AIR 2014 SC 3519** in which it has been held that the cause of action as mentioned in Section 142 of the Negotiable Instruments Act, 1881 is different from taking cognizance of offences. Clause (b) of this provision provides that the cause of action arises under clause (c) of the proviso to Section 138 of the Act, 1881. Hence, the compliance of proviso (a)(b)(c) of Section 138 of the Act, 1881 is mandatory before filing the complaint for prosecution under Section 138 of the Negotiable Instruments Act, 1881. Reliance has also been placed on the judgment of this court in the case of **Sant Kumar Shukla and Ors. vs. Movin and Anr.** reported in **2011 (4) CGLJ 601**.

5. Learned counsel for the respondent has opposed the grounds and submitted that he has no information as to on what date the notice was received by the accused petitioner. It was specifically pleaded in the complaint that the notice was dispatched on 29.9.2014 and presuming that the respondent received the notice within three days, the complaint has been filed accordingly within the limitation period. Hence, there is no impropriety or illegality in the order passed by the trial court.

6. Respondent filed a complaint against the petitioner before the Court of Judicial Magistrate First Class, Raipur in which the order taking cognizance has been passed on 15.12.2014 for trial of offence under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner and the process has been issued for appearance of the petitioner.

7. The petitioner preferred a revision before the Sessions Court, Raipur i.e. Revision Petition No. 279 of 2016 which was disposed of by order dated 7.9.2016 that the petitioner can approach the High Court under Section 482 of the Code of Criminal Procedure. Hence, the jurisdiction under Section 397 of the Cr.P.C. for exercising revisional powers is not available and the revision was dismissed. The impugned order dated 7.9.2016 has been challenged on the grounds that the complaint presented by the respondent was barred by limitation and that the complaint was filed without an affidavit of the complainant/ respondent, even then the order of taking cognizance was passed by the trial court without due application of mind. Hence, the order passed by the trial court is bad in law and the complaint against the petitioner is not maintainable.

8. The grounds in this petition are two fold. Firstly, the legal requirement under Section 138 (b) has not been complied with. Secondly, that the complaint was filed beyond limitation in contravention to the provision under Section 138(b) of the Act, 1881.

9. Section 138 proviso (b) of the Negotiable Instruments Act, 1881 provides:

“(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”

This provision clearly states of time limit of 30 days from the date of information received from the bank about the dishonour of cheque.

10. In paragraph 5 of the copy of complaint (Annexure-P/1) attached with the petition mentions that the Axis Bank, Raipur informed the respondent/ complainant on 3.9.2014. There is no dispute that the notice was dispatched through counsel by the respondent on 29.9.2014, that appears to be well within 30 days as provided under Section 138(b) of the Act, 1881. Hence, there is no delay in dispatch of notice.

11. The second ground raised in this petition about the complaint being barred by limitation is considered. On perusal of the copy of complaint (Annexure-P/1) it is clear that the notice to the petitioner/ accused was dispatched on 29.9.2014. It is pleaded, presuming that the notice was received in three days the complaint has been presented before the Court. If the statement in complaint is taken as it is, then the 3rd day happens to be 2nd October, 2014. Thereafter, in accordance with the provision under Section 138(c) of the Act, 1881, a time of 15 days is allowed for the drawer of the cheque to make the payment for which the cheque was drawn and that period expired on 17.10.2014 in accordance with the presumed date of receipt of the notice of the petitioner/ accused. On that basis, the

presentation of the complaint on 17.11.2014 cannot be regarded as delayed. With regard to the allegation by the petitioner/ accused that the respondent/ complainant has deliberately filed the complaint with delay, that has to be proved by the petitioner/ accused in his defence by production of evidence. Hence, for these reasons, no case is made out for interference in the impugned order and the order passed by the trial court.

12. For the aforesaid reasons, this petition is without any substance and it is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge