

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CRMP No. 1199 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. 24278 of 2014 pending before the Court of Judicial Magistrate First Class, Raipur on the ground that the same is not maintainable.
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 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.

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 in 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. 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.

6. In paragraph 5 of the copy of complaint attached with the petition mentions that the Axis Bank, Raipur informed the respondent/ complainant on 27.8.2014, but there is no statement as to whether this information was received on the same day or any other day. There is no dispute that the notice was dispatched through counsel by the respondent on 29.9.2014.

7. On the other hand, learned State counsel has opposed the grounds raised in this petition and the arguments submitted on behalf of the petitioner.

8. The submission of counsel for the petitioner is that the date of information of dishonour of cheque as mentioned is 27.8.2014 from which nothing else is made out, because it was required to be specifically pleaded by the respondent/ complainant that the information was received on a later date which has not been done, and as such, clearly the notice to the petitioner by the respondent has been dispatched beyond the period of 30 days. There is no provision under the Act, 1881 to relax the condition as laid down in the proviso (b) to Section 138 of the Act, 1881.

9. On perusal of the whole provision of Section 138 of the Act, it is apparently clear that the strict compliance has to be made with the conditions laid down in this provision and only on that basis the cause of

action shall arise as it is provided in clause (b) of Section 142 of the Negotiable Instruments Act, 1881. Hence, for these reasons, this petition is allowed on the ground that no cause of action has arisen in favour of the respondent for prosecuting the petitioner in this case owing to noncompliance of the proviso (b) (ii) of the Section 138 of the Negotiable Instruments Act, 1881. Consequently, the proceeding in Criminal Complaint Case No. 24278 of 2014 pending against the petitioner is quashed hereby.

10. Accordingly, the petition stands disposed of.

Sd/-

(Rajendra Chandra Singh Samant)
Judge