IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.26062 of 2018
and CRL.M.P.No.14962 of 2018

1.M/s.Career & Career Edu Services
Private Limited, a registered company,
No.802, 8th Floor, Jagat Trade Centre,
Fraser Road,
Patna-1, Bihar.

2.Mr.Roushan Kumar,
Director,
No.802, 8th Floor, Jagat Trade Centre,
Fraser Road,
Patna-1, Bihar. ... Petitioners/Accused 1 & 2

Vs.

Ganadipathy Tulsi's Jain Engineering College,
Chitoor-Cuddalore Road,
Kaniyambadi,
Vellore 602
Rep. by its Chief Administrative Officer,
A. Elango ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in S.T.C.No.122 of 2017 on the file of the learned Judicial Magistrate/Fast Track Court, Vellore and quash the same.

For Petitioners: Mr.A.Damodaran
For Respondent : Ms.Rita chandrasekar
for M/s.Aiyar and Dolia

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.122 of 2017, on the file of the learned Judicial Magistrate/Fast Track Court, Vellore.

2.The learned counsel for the petitioners submitted that the petitioners/accused 1 & 2 in S.T.C.No.122 of 2017, filed by the respondent/complainant for the offence punishable under Section 138 of Negotiable Instruments

Act. The first petitioner is the registered company engaged in education service agency and the second petitioner is the signatory of the cheque. The respondent entered into an agency agreement with the petitioners and accordingly, the petitioners shall campaign and enroll students for the respondent's college for admission. In this regard, the respondent paid a sum of Rs.4,50,000/- as performance guarantee towards terms of the agreement, the petitioners issued post dated cheque. The petitioners were failed to respond in terms of the agreement and as such the cheque was presented and returned dishonoured. Therefore, the respondent caused legal notice and lodged a complaint.

4.He further submitted that the alleged cheque was presented for collection and it was returned vide intimation memo dated 03.03.2017. The legal notice issued on 22.03.2017 and it was received by the petitioners on 28.03.2017. The petitioners issued reply notice on 03.04.2017 and the same was received by the respondent on 13.04.2017. To comply the notice, there is 15 days time from 29.03.2017 till 12.04.2017. Thereafter, the respondent can initiate proceedings for the offence punishable under Section 138 of Negotiable Instruments Act as against the petitioners, within a period of 30 days. The cause of action starts from 13.04.2017 and the last date for filing the complaint falls on 13.05.2017 but the respondent lodged the complaint only on 16.05.2017. Therefore, there is a delay of four days in filing the complaint.

5.He further submitted that the respondent failed to file any petition to condone the delay as contemplated under Section 143 sub clause (2) of the Negotiable Instruments Act. Therefore, the entire complaint is vitiated and the trial Court ought not to have taken cognizance for offence under Section 138 of the Negotiable Instruments Act as against the petitioner. There is absolutely no legally enforceable debt as alleged by the complainant. Even according to the complaint, the cheque was issued as security, therefore, he prayed for quashing the entire proceedings.

6.Per contra, the learned counsel for the respondent submitted that the petitioners are arrayed as accused 1 & 2. The respondent entered into the petitioners by an agreement dated 10.06.2016 on terms and conditions that the petitioners shall campaign and enroll the students in the respondent's college for admission as per the norms of the college and if they done, they shall be entitled to claim more money, for which the respondent has paid a sum of Rs.4,50,000/-. Thereafter, the petitioners were failed to perform and requested time to settle the amount. Therefore, in terms of the agreement, the respondent presented the cheque for collection and it was returned dishonoured for the reason that the payment stopped by the drawer. Therefore, the respondent caused legal notice on 22.03.2017 and the petitioners were issued reply notice on 03.04.2017 with false and frivolous particulars. Therefore, the respondent filed complaint and the same has been taken cognizance by the learned Judicial Magistrate, Fast Track Court, Vellore, STC.No.122 of 2017.

7.She further submitted that there is no delay in filing the complaint and if at all there is a delay in filing, it is a curable defect since the provision under Section 142 of the Negotiable Instruments Act. 142(b) proviso permits the complainant to file the complaint along with the condone delay petition. Therefore, she contended that the defect of belated filing of complaint is a curable defect, on the sole ground that the complaint cannot be quashed and she prayed for dismissal of quash petition.

8.Heard, the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

9.It is seen from the records that the petitioners are accused 1 and 2 in the proceedings instituted by the respondent/complainant for the offence punishable under Section 138 of the Negotiable Instruments Act in S.T.C.No.122 of 2017, on the file of the learned Judicial Magistrate, Fast Track Court, Vellore. The petitioners and the respondent entered into an agreement for campaigning and enrolling students in the respondent's college for admission, in which the petitioners were failed to perform as per the terms and conditions of the agreement and towards the repayment of the amount received by them and they issued a cheque, which was returned for the reason that the payment stopped by the drawer. The respondent issued notice under Section 138 of the Negotiable Instruments Act to the petitioners on 22.03.2017 and the same was received on 28.03.2017. From the date of receipt of notice, the petitioners have 15 days time to settle the amount and its starts from 29.03.2017 to 12.04.2017. Thereafter, the respondent ought to have filed the complaint within a period of 30 days it falls on 13.05.2017.

10.It is also seen from the complaint that it was presented on 16.05.2017 before the learned Judicial Magistrate I, Vellore. The period of 30 days time falls on 13.05.2017. Therefore, there is a delay of four days in filing the complaint. Admittedly, the respondent did not file any petition to condone the delay of four days in filing the complaint. The learned Magistrate also without calculating the days, have taken cognizance of the complaint in S.T.C.No.122 of 2017.

11.In this regard, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of Econ Antri Limited vs. Rom Industries Limited and Another reported in (2014) 11 SCC 769 held as follows:

> 11.We have heard learned counsel for the parties at some length. We have also carefully perused their written submissions. Ms Prerna Mehta, learned counsel for the appellant submitted that Saketh [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 : 1999 SCC (Cri) 329] lays down the correct law. She submitted that as held by this Court in Saketh [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 : 1999 SCC (Cri) 329] while computing the period of one month as provided under Section 142 (b) of the NI Act, the first day on which the cause of action has arisen has to be excluded. The same principle is applicable in computing the period of 15 days under Section 138(c) of the NI Act. The counsel submitted that Saketh [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 : 1999 SCC (Cri) 329] has been followed by this Court in Jindal Steel and Power Ltd. [Jindal Steel and Power Ltd. v. Ashoka Alloy Steel Ltd., (2006) 9 SCC 340 : (2006) 2 SCC (Cri) 540] and Subodh S. Salaskar[Subodh S. Salaskar v. Jayprakash M. Shah, (2008) 13 SCC 689 : (2009) 3 SCC (Cri) 834] . The counsel also relied on Section 12(1) of the Limitation Act, 1961 which provides that the first day on which cause of action arises is to be excluded. In this connection the counsel relied on State of H.P.v.Himachal Techno Engineers [State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210 :

(2010) 4 SCC (Civ) 605] wherein it was held that Section 12 of the Limitation Act is applicable to the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act"), which is a statute providing for its own period of limitation. The counsel submitted that the NI Act is a special statute and it does not expressly bar the applicability of the Limitation Act. The counsel submitted that if this Court reaches a conclusion that the provisions of the Limitation Act are not applicable to the NI Act, it should hold that Section 9 of the General Clauses Act, 1897 covers this case. The counsel submitted that in Tarun Prasad Chatterjee v.Dinanath Sharma [Tarun Prasad Chatterjee v.Dinanath Sharma, (2000) 8 SCC 649] Section 12 of the Limitation Act is held to be in pari materia with Section 9 of the General Clauses Act. The counsel submitted that in the same judgment this Court has held that use of words "from" and "within" does not reflect any contrary intention and the first day on which the cause of action arises has to be excluded. The counsel submitted that in the circumstances this Court should hold that Saketh [Saketh India Ltd.v. India Securities Ltd., (1999) 3 SCC 1 : 1999 SCC (Cri) 329] lays down correct proposition of law.

12.Shri Sunil Gupta, learned Senior Counsel for the respondents, on the other hand, submitted that the provisions of the NI Act provide for a criminal offence and punishment and, therefore, must be strictly construed. The counsel submitted that it is well settled that when two different words are used in the same provision or statute, they convey different meaning (Board of Revenue v. Arthur Paul Benthall[AIR 1956 SC 35] , Labour Commr. v. Burhanpur Tapti Mills Ltd. [AIR 1964 SC 1687] ,B.R. Enterprises v.State of U.P. [(1999) 9 SCC 700] , Kailash Nath Agarwal v. Pradeshiya Industrial & Investment Corpn. of U.P. Ltd.[(2003) 4 SCC 305] , DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana [(2003) 5 SCC 622]).

13. The counsel pointed out that Section 138(a) provides a period of 6 months from the date on which the cheque is drawn, as the period within which the cheque is to be presented to the bank. Section 138 (b) provides that the payee must make a demand of the amount due to him within 30 days of the receipt of information from the bank. Section 138(c) uses

the words “within 15 days of the receipt of notice”. Using two different words “from” and “of” in the same section at different places clarifies the intention of the legislature to convey different meanings by the said words. According to the counsel, seen in this light, the word “of” occurring in Section 138(c) and Section 142(b) is to be interpreted differently as against the word “from” occurring in Section 138(a). The word “from” may be taken as implying exclusion of the date in question and may well be governed by the General Clauses Act, 1897. However, the word “of” is different and needs to be interpreted to include the starting day of the commencement of the prescribed period. It is not governed by Section 9 of the General Clauses Act, 1897. Thus, for the purposes of Section 142(b), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting date on which the cause of action arises should be included for computing the period of 30 days. The counsel further submitted that Section 138(c) and Section 142(b) prescribe the period within which certain acts are required to be done. Section 12(1) of the Limitation Act cannot be resorted to so as to extend that period even by one day. If the starting point is excluded, that will render the word “within” of Section 142(b) of the NI Act otiose.

39.In view of the above, it is not possible to hold that the word “of” occurring in Sections 138(c) and 142(b) of the NI Act is to be interpreted differently as against the word “from” occurring in Section 138(a) of the NI Act; and that for the purposes of Section 142(b), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting day on which the cause of action arises should be included for computing the period of 30 days. As held in Fallon, ex p[(1793) 5 TR 283 : 101 ER 159] the words “of”, “from” and “after” may, in a given case, mean really the same thing. As stated in Stroud's Judicial Dictionary, Vol. 3, 1953 Edn., Note (5), the word “of” is sometimes equivalent of “after”.

40. Reliance placed on Danial Latifi [Danial Latifi v.Union of India, (2001) 7 SCC 740 :

(2007) 3 SCC (Cri) 266] is totally misplaced. In that case the Court was concerned with Section 3 (1)(a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986. Section 3(1)(a) provides that a divorced woman shall be entitled to a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband. This provision is entirely different from Section 142(b) of the NI Act, which provides that the complaint is to be made "within one month of the date on which the cause of action arises" (emphasis supplied).

41. We may, at this stage, note that the learned counsel for the appellant relied on State of H.P. [State of H.P. v.Himachal Techno Engineers, (2010) 12 SCC 210 : (2010) 4 SCC (Civ) 605] where, while considering the question of computation of three months' limitation period and further 30 days within which the challenge to the award is to be filed, as provided in Section 34(3) and proviso thereto of the Arbitration Act, this Court held that having regard to Section 12 (1) of the Limitation Act, 1963 and Section 9 of the General Clauses Act, 1897, day from which such period is to be reckoned is to be excluded for calculating limitation. It was pointed out by the counsel for the respondents that Section 43 of the Arbitration Act makes the Limitation Act, 1963 applicable to the Arbitration Act whereas it is held to be not applicable to the NI Act and, therefore, this judgment would not be applicable to the present case. We have noted that in this case reliance is not merely placed on Section 12 (1) of the Limitation Act. Reliance is also placed on Section 9 of the General Clauses Act. However, since, in the instant case we have reached a conclusion on the basis of Section 9 of the General Clauses Act, 1897 and on the basis of a long line of English decisions that where a particular time is given, from a certain date, within which an act is to be done, the day of the date is to be excluded, it is not necessary to discuss whether State of H.P. [State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210 : (2010) 4 SCC (Civ) 605] is applicable to this case or not because Section 12(1) of the Limitation Act is relied upon therein.

> 42.Having considered the question of law involved in this case in proper perspective, in the light of relevant judgments, we are of the opinion that Saketh [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 : 1999 SCC (Cri) 329] lays down the correct proposition of law. We hold that for the purpose of calculating the period of one month, which is prescribed under Section 142(b) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. We hold that SIL Import, USA[SIL Import, USA v. Exim Aides Silk Exporters, (1999) 4 SCC 567 : 1999 SCC (Cri) 600] does not lay down the correct law. Needless to say that any decision of this Court which takes a view contrary to the view taken in Saketh [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 : 1999 SCC (Cri) 329] by this Court, which is confirmed by us, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly.

12.The Hon'ble Supreme Court of India held that for the performance of calculating the period of one month, the period has to be reckoned by excluding the date on which the cause of action arose. Further, beyond period of 30 days the complaint cannot be entertained. In the case on hand, the complaint lodged beyond 30 days namely, with delay of four days that too without any petition to condone the delay.

13.Though the submission made by the learned counsel for the respondent is that the defect of belated filing of complaint is curable one, she did not substantiate her submission with any material. Therefore, this Court is of the considered opinion that though there is a proviso under Section 142(b) of Negotiable Instruments Act, belated filing of complaint without any condone delay petition is not a curable defect. The complaint can be filed belatedly provided that if the complainant satisfies the Court with sufficient cause for not filing the complaint within such period by condone delay petition. The case on hand, the respondent did not file any condone delay petition and the trial Court also without calculating the days have taken cognizance. Therefore, the complaint is barred by limitation and the trial Court ought not to have taken cognizance.

14.In view of the above, this Criminal Original Petition stands allowed and the proceedings in S.T.C.No.122 of 2017, on the file of the learned Judicial Magistrate/Fast Track Court, Vellore, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

pam

+1cc to Mr.A.Damodaran , Advocate SR.No. 21370
+1cc to Mr.M/s.Aiyar and Dolia , Advocate SR.No. 21289

CRL.O.P.No.26062 of 2018
and CRL.M.P.No.14962 of 2018

VSN II (CO)
A.SK(15/04/2019)