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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL. L.P. 212/2015

RAJEEV GOYEL ..... Petitioner

Through: Mr. Sunil Kumar Jangra, Advocate.

Versus

ASHOK SHARMA .....Respondent

Through: Ms. Aastha Gupta, Advocate.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% **04.07.2018**

<u>CRL. M.A. 4887/2015 (for condonation of delay in re-filing)</u>

This application seeks condonation of 215 days delay in re-filing the petition on account of the petitioner's having pursued a 'Criminal Appeal' instead of a 'Criminal Leave Petition' against the impugned order. The said appeal was withdrawn on 07.11.2014 with liberty to file the Leave Petition. The present petition was filed after a delay of 215 days. It is the petitioner's case that for the erroneous legal advice, whereby he pursued an appeal instead of a Leave Petition, he should not be made remediless.

In view of the above, in the interest of justice, the application is allowed. The delay of 215 days in re-filing the petition is condoned.

The application stands disposed-off.

<u>CRL. L.P. 212/2015</u>

This Leave Petition impugns an order dated 25.02.2014 dismissing the petitioner's complaint under section 138 of the Negotiable Instruments

Act,1881 ("NI Act"). The petitioner had presented a cheque of Rs. 3.5 lacs, which was dishonoured. It is the petitioner's case that he had loaned an amount of Rs. 3.5 lacs and the aforementioned cheque was in repayment of the said loan. He also claims for another loan of Rs. 3 lacs for which a cheque was issued in discharge of a liability, which too was dishonoured. Additionally, the petitioner claims that the respondent/accused had purchased certain goods from him worth Rs.1,52,000/- and a cheque for the same amount was issued. He has filed three different complaint cases under section 138 of the NI Act. The present case is apropos a cheque of Rs. 3.5 lacs issued on 31.04.2007. All three cheques were returned on account of memo stating that "*funds were insufficient*". Be that as it may, the impugned order has dismissed the complaint case on a purely legal ground, i.e., a cheque dated 31.04.2007 was invalid in the first instance, as the month of April, does not have a 31st day. It has reasoned as under:

> *"2. The present case is based upon a cheque of Rs.3,50,000/- received in purported discharge of a friendly loan of the same amount. The cheque is dated 31/04/2007. I am of the view that there is no necessity to go into the details of entire controversy as the complaint can be decided on pure legal question".*
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> *2.1. Hon'ble Supreme Court in Anil Kumar Sawhney vs. Gulshan Rai 1993 (4) SCC 424 has held as under:*
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> *"With effect from the date shown on the face of the said cheque it becomes a "cheque" under the Act and the provisions of Section 138(a) would squarely be attracted."*
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> *2.2. Then a three judges bench of Hon'ble Supreme Court reiterated the concept in Ashok Yeshwant Badave vs Surendra Madhavrao Nighojakar 2001 (3) SCC 726 with the following observation:*
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> > *"For prosecuting a person for an offence under Section 138 of the Act, it is inevitable that the cheque is*

presented to the banker within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier. When a post dated cheque is written or drawn, it is only a bill of exchange and so long the same remains a bill of exchange, the provision of Section 138 are not applicable to the said instrument. The post-dated cheque becomes a cheque within the meaning of Section 138 of the Act on the date which is written thereon and the 6 months period has to be reckoned for the purposes of proviso (a) to Section 138 of the Act from the said date. Thus while respectfully agreeing with the law laid down by this Court in the case of Anil Kumar Sawhney, we hold that six months period shall be reckoned from the date mentioned on the face of the cheque and not any earlier date on which the cheque was made over by the drawer to the drawee".

2.3. Similar was the position with the another three judges bench of Hon'ble Supreme Court in Shri Ishar Alloy Steels Ltd. vs Jayaswals NECO Ltd. 2001(2)SCALE173.

3. One thing is very dear, there must be some date from which period of validity of cheque can be counted for the purpose of proviso-(a) to Section-138 NI Act.

3.1. In the present case, the date is 31/04/2007. A clearly fictitious date having no existence in reality. This can not form a basis for counting any period.

3.2. Section-42 NI Act talks about bills drawn in fictitious name and prohibits the same from being treated as invalid merely for that reason. However, no provision has been brought to my notice which may validate a fictitious date".

The Court is not persuaded by the contention of the learned counsel for the petitioner that insofar as the respondent has acknowledged his liability that "*I gave a security cheque dated 31.04.2007 amounting to Rs. 3,50,000/- to the complainant*"

These proceedings are pursued under section 138 of the Negotiable

Instrument Act, i.e., for enchashment of bill of exchange and not for recovery of dues. For that, separate proceedings may be available. However, for the sake of the aforesaid provision of law, what is to be seen is whether the financial instrument which was presented was a negotiable instrument was valid. The Gregorian calendar has 12 months, of which April is the 4th month and it has only 30 days. The cheque was issued on a day, i.e. 31st April, which never dawned. It was invalid and could not be a part of any proceedings under the Negotiable Instruments Act, 1881.

The Court finds no reason to interfere with the impugned order. The petition is without merit and is accordingly dismissed.

NAJMI WAZIRI, J.

JULY 04, 2018

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