



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD)No.132 of 2013

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Paulpandy

... Appellant/Respondent/Complainant

Vs.

Indrajith

... Respondent/Appellant/Accused

PRAYER: Criminal Appeal is filed under Section 378 of Cr.P.C., to call for the records relating to the judgment of acquittal dated 07.02.2013 made in C.A.No.10 of 2012 on the file of the Principle District Sessions Court, Theni in reversing the judgment of conviction made in S.T.C.No.159 of 2011 dated 14.02.2011 on the file of Fast Track Court (Magisterial Level) Theni, under Section 138 of Negotiable Instrument Act and set aside the same as illegal and allow the appeal.

For Appellant	: Mr.Sulthan Basha
	For M/s.Ajmal Associates
For Respondent	: Mr.K.Vamanan

O R D E R

This criminal appeal has been filed by the appellant/complainant as against the order of acquittal passed by the Principle District and Sessions Court, Theni, in C.A.No.10 of 2012, dated 07.02.2013.

2.This case is arising out of a complaint instituted by the appellant as against the respondent for the offence under Section 138 of Negotiable Instruments Act. The trial Court by order, dated 14.02.2011 in S.T.C.No.159 of 2011, convicted and sentenced the respondent/accused to undergo three months simple imprisonment and to pay a compensation of Rs.1,00,000/- to the appellant under Section 357(3) of Cr.P.C. As against which, the respondent has preferred an appeal before the Principle District and Sessions Court, Theni, and the appellate Court acquitted the accused. Aggrieved over the same, the present appeal is filed.

3.The appellate Court acquitted the accused based on the proviso under Section 138 clause (C) of the Negotiable Instruments Act which reads as follows:

<https://hcservices.ecourts.gov.in/hcservices> "The drawer of such cheque fails to make the



payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice."

4.The Honourable Supreme Court in **Narsingh Das Tapadia Vs. Goverdhan Das Partani** reported in **(2000) 7 SCC 183: (AIR 2000 SC 2946)** held that:

"Mere presentation of the complaint in the Court cannot be held to mean that its cognizance had been taken by the Magistrate. If the complaint is found to be premature, it can await maturity or be returned to the complainant for filing later and its mere presentation at an earlier date need not necessarily render the complaint liable to be dismissed or confer any right upon the accused to absolve himself from the criminal liability for the offence committed."

5.According to the complainant, in discharging of liability, the accused gave a cheque on 10.06.2009 and the same was presented for collection on 11.07.2009 and on the same date, it was returned. Thereafter, the complainant sent a legal notice to the respondent. The said notice was received by the Accused on 17.07.2009. Within the statutory period of fifteen days, the appellant/complainant filed this complaint under Section 138 of Negotiable Instruments Act on 3.08.2009 and the same was taken on file on 06.08.2009 and therefore, it appears that within the statutory period of 15 days, the complaint was filed and the same was also taken cognizance by the Trial Court. Thereafter, the appellate Court by referring to the judgment of the Honourable Supreme court in **Narsingh Das Tapadia Vs. Goverdhan Das Partani** reported in **(2000) 7 SCC 183: (AIR 2000 SC 2946)** has acquitted the respondent/accused.

6.The learned counsel appearing for the appellant has vehemently opposed that the cheque was issued for a legally enforceable debt even after cognizance was taken by the court, the accused has not paid the cheque amount. The appellate Court ought not to have acquitted the accused, when the accused has not disputed the cheque in Ex.P1 and the signature found in cheque Ex.P.1.

7.Mr.R.Vamanan, learned counsel appearing for the respondent/accused has relied upon a judgment of the Honourable Supreme Court in **Yogendra Pratap Singh Vs. Savitri Pandey** reported in **(2014) 10 Supreme Court cases 713** wherein, the Honourable Supreme Court has raised the following two questions for consideration;

"1.1.(i) Can cognizance of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 be taken on the basis of a complaint filed before the expiry of the period of 15 days stipulated in the



been served on the drawer/accused, the Court is not clothed with the jurisdiction to take cognizance of an offence under Section 138 on a complaint filed before the expiry of 15 days from the date of receipt of notice by the drawer of the cheque.

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36.A complaint filed before expiry of 15 days from the date on which notice has been served on drawer/accused cannot be said to disclose the cause of action in terms of clause (c) of the proviso to Section 138 and upon such complaint which does not disclose the cause of action the Court is not competent to take cognizance. A conjoint reading of Section 138, which defines as to when and under what circumstances an offence can be said to have been committed, with Section 142(b) of the NI Act, that reiterates the position of the point of time when the cause of action has arisen, leaves no manner of doubt that no offence can be said to have been committed unless and until the period of 15 days, as prescribed under clause (c) of the proviso to Section 138, has, in fact, elapsed. Therefore, a Court is barred in law from taking cognizance of such complaint. It is not open to the Court to take cognizance of such a complaint merely because on the date of consideration or taking cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer/accused has elapsed. We have no doubt that all the five essential features of Section 138 of the NI Act, as noted in the judgment of this Court in *Kusum Ingots & Alloys Ltd.*¹⁹ and which we have approved, must be satisfied for a complaint to be filed under Section 138. If the period prescribed in clause © of the proviso to Section 138 has not expired, there is no commission of an offence nor accrual of cause of action for filing of complaint under Section 138 of the NI Act.

37.We, therefore, do not approve the view taken by this Court in *Narsingh Das Tapadial* and so also the judgments of various High Courts following *Narsingh Das Tapadial* that if the complaint under Section 138 is filed before expiry of 15 days from the date on which notice has been served on the drawer/accused the same is premature and if on the date of taking cognizance a period of 15 days from the date of service of notice on the drawer/accused has expired, such complaint was legally maintainable and, hence, the same is overruled.



38. Rather, the view taken by this Court in *Sarav Investment & Financial Consultancy*² wherein this Court held that service of notice in terms of Section 138 proviso (b) of the NI Act was a part of the cause of action for lodging the complaint and communication to the accused about the fact of dishonouring of the cheque and calling upon to pay the amount within 15 days was imperative in character, commends itself to us. As noticed by us earlier, no complaint can be maintained against the drawer of the cheque before the expiry of 15 days from the date of receipt of notice because the drawer/accused cannot be said to have committed any offence until then. We approve the decision of this Court in *Sarav Investment & Financial Consultancy*² and also the judgments of the High Courts which have taken the view following this judgment that the complaint under Section 138 of the NI Act filed before the expiry of 15 days of service of notice could not be treated as a complaint in the eye of law and criminal proceedings initiated on such complaint are liable to be quashed.

39. Our answer to question (i) is, therefore, in the negative.

40. The other question is that if the answer to question (i) is in the negative, can the complainant be permitted to present the complaint again notwithstanding the fact that the period of one month stipulated under Section 142(b) for the filing of such a complaint has expired.

41. Section 142 of the NI Act prescribes the mode and so also the time within which a complaint for an offence under Section 138 of the NI Act can be filed. A complaint made under Section 138 by the payee or the holder in due course of the cheque has to be in writing and needs to be made within one month from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. The period of one month under Section 142(b) begins from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. However, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within the prescribed period of one month, a complaint may be taken by the Court after the prescribed period. Now, since our answer to question (i) is in the negative, we observe that the payee or the holder in due course of the



cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to question (i). As we have already held that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the Court of sufficient cause. Question (ii) is answered accordingly."

8.Considering the decision taken by the Honourable Supreme Court referred to supra, this Court finds no merit to allow this appeal. Accordingly, this Criminal Appeal is dismissed.

Sd/-

Assistant Registrar (w)

// True Copy //

Sub Assistant Registrar(CS)

vsg

To

1.The Principle District Sessions Court,
Theni.

2.The Judicial Magistrate,
The Fast Track Court
(Magisterial Level),
Theni.

3.The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1CC TO M/s.AJMAL ASSOCIATES, ADVOCATE, SR NO.97392

+1CC TO MR.K.VAMANAN, ADVOCATE, SR NO.97069

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KK/SAR/12.12.2019/6P-7C/