IN THE HIGH COURT FOR THE STATE OF TELANGANA

***

CRIMINAL PETITION Nos.15547, 15548 & 15560 of 2014

Crl.P.Nos.15547, 15548 & 15560 of 2014

Between:

P. Narasimha

………Petitioner/accused

and

The State of A.P. rep. by its Public Prosecutor and another

…….Respondents

Date of Judgment pronounced on : 22-02-2019

HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals: : Yes/No
3. Whether The Lordship wishes to see the fair copy Of the Judgment? : Yes/No

*** HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO**

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< **GIST:**

> **HEAD NOTE:**

! Counsel for the petitioners : Sri K. Ram Murthy

^ Counsel for the respondents : learned PP for R1

? Cases referred

1. (2014) 9 SCC 129
2. (1999) 7 SCC 510
3. AIR 2010 SC 1898
4. 2000(6)ALT15(SC); 2000(6)SCALE729; (2000)8SCC649
5. [1999] 2 Crimes 11 (Mad)
6. 1999 Crl.J 1822 (SC)=1999(3)SCC 1
7. (1972) 1 SCC 639
8. (2010) 12 SCC 210
9. 2014(4) CCC 305 (S.C.)
10. AIR 2000 SC 954 : (2000) 2 SCC 745
11. (2000) 7 SCC 183
12. (2007) 14 SCC 753
13. Crl.A.No.1079 of 2006 dt.26.08.2013
14. (1999) 4 SCC 567
15. (2001) 3 SCC 609

HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.15547, 15548 & 15560 of 2014

COMMON ORDER:

The petitioner by name P.Narasimha is the accused in CC.Nos.784, 794 & 844 of 2012, which are cases maintained against him respectively by T. Naveen Singh in all the cases for the respective offence under Section 138 Negotiable Instruments Act that was taken cognizance and are pending before the learned XVIII Additional Chief Metropolitan Magistrate, Hyderabad at Erramanzil.

2. It is after appearance from the summons at post cognizance stage impugning the same he filed the quash petitions with contentions that contents of the very complaint filed respectively by the complainant-2nd respondent are untrue, incorrect and there is no legally enforceable debt and from the very contents of the complaint from the date of alleged issuance of cheque to the date the cheque presented it is beyond 6 months and thereby the 3 cheques in question are outdated and that was also the return by the bank all the 3 cheques are outdated. The other contention is cheques pertain to Axis Bank whereas presented in ICICI bank though to be presented within the jurisdiction of accused banker and thereby the cognizance and continuation of the case proceedings in 3 cases are liable to be quashed.

3. The quash petitions are filed in December 2014 respectively from the law prevailing by then. There is amendment to the NI Act on the jurisdiction aspect with retrospective effect after the expression of the Apex Court in **Dashrath Rupsingh**

Rathod Vs. State of Maharashtra[1] practically restoring the legal position of **K. Bhaskaran Vs. Sankaran Vaidhyan Balan**[2] with reference to Sections 177 & 178 Cr.P.C. for the offence under Sections 138 to 142 of NI Act a complaint to be filed as per Section 2 Cr.P.C. to take cognizance under Section 190 Cr.P.C. r/w Sections 200 to 204 Cr.P.C.

4. The 2nd respondent complainant even served failed to attend, proof filed. Heard learned counsel for the petitioner respectively and learned Public Prosecutor representing the 1st respondent-State and taken as heard the complainant and perused the material on record.

5. So far as the jurisdiction aspect raised it has no legs to stand from the law prevailing as on date but for to say left open any further defence before the trial Court to consider on own merits equally as to the truth of the complaint allegations as to the liability for not a case of cheque not rooted from the account and not even a case of cheque not bear the signature of the accused respectively to apply the presumptions under Sections 118 r/w 139 of the NI Act with reference to the expression of the Apex Court in **Rangappa Vs. Mohan**[3].

6. Having regard to the above how far that decision apply to the facts is also a matter left open to agitate in defence before the trial Court in this regard.

7. Now the crucial aspect to decide from the material placed on record with reference to the cheque return memo of cheque not presented within 6 months concerned, the respective 3 cheques

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[1] (2014) 9 SCC 129
[2] (1999) 7 SCC 510
[3] AIR 2010 SC 1898

particulars of date of issue and date of presentation viz., cheque No.021899 dated 22.06.2011 in CC.No.784 of 2012 in Crl.P.No.15547 of 2018; Cheque No.021897 dated 22.06.2011 in CC.No.844 of 2012 in Crl.P.No.15548 of 2018 and Cheque No.021898 dated 22.06.2011 in CC.No.794 of 2012 in Crl.P.No.15560 of 2018. All the three cheques were presented on 22.12.2011.

8. Now the core issue in deciding the above crucial aspect with reference to the facts is whether the cheque not presented within the then prevailing validity time of 6 months from the date it was drawn respectively.

9. From the scheme of the provisions, Sections 138 and 142 of the Act, it is seen that a cheque can be presented to the Bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. Thus the period of validity is within a period of six months (within three months from 1st April, 2012-13 as per RBI guidelines) from the date on which it is drawn or within the period of its validity.

10. A reading of Section 25 of the Negotiable Instruments Act would clearly show that if the day on which the cheque period expires, is a public holiday, the cheque shall be deemed to be due on the next preceding business day. In the said section, the Explanation would indicate that the expression "public holiday" includes Sunday.

11. Similar is the wording of Section 10 of the General Clauses Act, 1897 reads:

> "10. Computation of time-(1) Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done

or taken in any court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877) applies.

(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887."

12. Scope of Section 25 NI Act and Section 10 General Clauses Act supra is not the issue herein to discuss further but for Section 9 General Clauses Act.

13. Before going in to that, for more clarity it is in need to extract Section 138 of the Act, which reads:

Section 138: Dishonour of cheque for insufficiency, etc., of funds in the account — Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

(a) ***the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier***;

(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***; and

(c) ***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***.

Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

14. It is one of the settled principles of interpretation of statutes that when two interpretations are possible about a penal provision, only that which is less onerous to the accused should be preferred (Vide Maxwell on the Interpretation of Statutes - 12th edition at page 239): "The principles applied in construing a penal Act is that if, in construing the relevant provisions, "there appears any reasonable doubt or ambiguity", it will be resolved in favour of the person who would be liable to the penalty." "If there are two reasonable constructions, we must give the more lenient one. That is the settled rule for the construction of penal sections." The Supreme Court has adopted the same principle for interpretation of penal statutes. Departure from this principle is permitted if the object and scheme of the statute would be defeated otherwise.

15. It has, always to be kept in mind that Section 138 of the Act creates an offence and the law relating to the penal provisions has to be interpreted strictly so that non-one can ingeniously or insidiously or guilefully or strategically be prosecuted. It has further to be noticed that to make an offence under Section 138 of

the Act, it is mandatory that the cheque is presented to "the bank" within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. It is the cheque drawn which has to be presented to "the bank" within the period specified therein.

16. The wording respectively and consciously is not six months or thirty days or fifteen days but within six months or within thirty days or within fifteen days. Once such is the case, invoking section 9 of the General clauses Act for one day on which the cheque was drawn to exclude or not is the question to answer herein further.

17. Section 9 of the General Clauses Act, 1897 reads that:

> Section 9 Commencement and termination of time:
>
> (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from, and, for the purpose of including the last in a series of days or any other period of time, to use the word "to.
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> (2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

18. In **Tarun Prasad Chatterjee Vs. Dinanath Sharma**[4] it was observed from the wording that as per Section 9 of the General Clauses Act, ordinarily in computing period of time the rule observed is to exclude first day and include last day.

19. No doubt even before the Madras High Court in **K.S.Subbaraman Vs. Iyyammal**[5] the question was whether presentment was made within the period of six months, not

[4] 2000(6)ALT15(SC); 2000(6)SCALE729; (2000)8SCC649
[5] [1999] 2 Crimes 11 (Mad)

referred Section 9 of GC Act. The cheque in that case was issued on June 25, 1993, and was presented at the collecting bank on December 27, 1993. Rejecting the contention that the cheque was presented two days late, it is held that on December 25, 1993 and December 26, 1993, the bank was closed owing to holidays and the next working day was December 27, 1993. If accordingly, on the next working day when the bank reopens after holidays the cheque is presented, it would amount to the presentment within its validity period and the complaint if filed will be sustainable. What is therefore laid down is that if the period of six months or the period of validity expires on the day or during the period the bank is closed owing to holidays or weekly off, the presentment of the cheque if made on the next working day when the bank reopens, will be valid and effective presentation and not the presentation barred by the period of limitation provided in section 138.

20. The Madras High Court in **K.S.Subbaraman supra**, did not deal with the day to be excluded or not and proceeded as, if filed on December 25, 1993 is valid and as that and next day were holidays presented on 27th is valid. Here, in this case, it is not even presentment at the bank is delayed because of the holidays to the bank to present on next working day when bank reopened. There are subsequent expressions of the Supreme Court in this regard.

21. Particularly during 1999, in **Saketh India Ltd. Vs. India Securities Limited**[6], in answering a question as to within fifteen days, the 1st day whether to exclude. In this context, it was held in **Saketh India Ltd. Supra**, while calculating the period of within 15 days from the date of notice that the first day was to be excluded.

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[6] 1999 Crl.J 1822 (SC)=1999(3)SCC 1

22. In **Haru Das Gupta v. State of West Bengal**[7]**, it was held that the rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded; the effect of defining the period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. Referring to several English decisions on the point, this Court observed that the principle of excluding the day from which the period is to be reckoned is incorporated in Section 12(1) and (2) of the Limitation Act, 1963. This principle is also incorporated in Section 9 of the General Clauses Act, 1897.**

23. However in State of Himachal Pradesh Vs. Himachal Techno Engineers & Another[8]**, it is held that Section 12 of the Limitation Act is not applicable to the Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act"), which is a statute providing for its own period of limitation.**

24. The Apex Court (3JB), in a later expression in **Yogendra Pratap Singh vs. Savitri Pandey**[9], observed in paras 36-39 as follows:

> "36. Can an offence under Section 138 of the NI Act be said to have been committed when the period provided in clause (c) of the proviso has not expired? Section 2(d) of the Code defines 'complaint'. According to this definition, complaint means any allegation made orally or in writing to a Magistrate with a view to taking his action against a person who has committed an offence. Commission of an offence is a sine qua non for filing a complaint and for taking cognizance of such offence. A bare reading of the

[7] (1972) 1 SCC 639
[8] (2010) 12 SCC 210
[9] 2014(4) CCC 305 (S.C.)

provision contained in clause (c) of the proviso makes it clear that no complaint can be filed for an offence under Section 138 of the NI Act unless the period of 15 days has elapsed. Any complaint before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint at all in the eye of law. It is not the question of prematurity of the complaint where it is filed before expiry of 15 days from the date on which notice has been served on him, it is no complaint at all under law. As a matter of fact, Section 142 of the NI Act, inter alia, creates a legal bar on the Court from taking cognizance of an offence under Section 138 except upon a written complaint. Since a complaint filed under Section 138 of the NI Act before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint in the eye of law, obviously, no cognizance of an offence can be taken on the basis of such complaint. Merely because at the time of taking cognizance by the Court, the period of 15 days has expired from the date on which notice has 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.

37. 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[10] *and which we have approved, must be satisfied for a complaint to be filed under Section 138***. If the period prescribed in clause (c) 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.

38. We, therefore, do not approve the view taken by this Court in Narsingh Das Tapadia[11] and so also the judgments of various High Courts following Narsingh Das Tapadia 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.

39. Rather, the view taken by this Court in Sarav Investment & Financial Consultancy[12] 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 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

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[10] AIR 2000 SC 954 : (2000) 2 SCC 745
[11] (2000) 7 SCC 183
[12] (2007) 14 SCC 753

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."

25. Yogendra Pratap Singh supra no doubt not an answer to the present issue, but for to consider with reference to it herein as to whether the complaint filed without excluding a day is a premature filing and thereby won't lie. For that what **Yogendra Pratap Singh** supra not referred **M/s. Econ Antri Ltd Vs M/s. Rom Industries Ltd (3JB)[13] is relevant to consider.**

26. In M/s. Econ Antri Ltd supra while answering the issue from 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 whether clarifies the intention of the legislature to convey different meanings by the said words and if the starting point is excluded, that will render the word 'within' of Section 142(b) of the N.I. Act otiose? Observed that the view taken in SIL Import USA runs counter to the view taken in **Saketh** supra for the reason in SIL Import supra, it was observed that as per clause (c) of Section 138, starting point of period for making payment is the date of receipt of the notice. Once it starts, the offence is completed on failure to pay the amount within 15 days therefrom. Cause of action would arise if the offence is committed. Thus, it was held that since the fax was received on 11/6/1996, the period of 15

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[13] Crl.A.No.1079 of 2006 dt.26.08.2013

days for making payment expired on 26/6/1996. Since amount was not paid, offence was committed and, therefore, cause of action arose from 26/6/1996 and the period of limitation for filing complaint expired on 26/7/1996 i.e. the date on which period of one month expired as contemplated under Section 142(b). The complaint filed on 8/8/1996 was, therefore, beyond the period of limitation. Having referred to Goldsmiths' Company Vs. The West Metropolitan Railway Company [1904 KB 1 at 5] among other, it was observed that as the Limitation Act is held to be not applicable to N.I. Act, drawing parallel from **Tarun Prasad Chatterjee** supra where the Limitation Act was held not applicable, we are of the opinion that with the aid of Section 9 of the General Clauses Act, 1897 it can be safely concluded in the present case that while calculating the period of one month which is prescribed under Section 142(b) of the N.I. Act, the period has to be reckoned by excluding the date on which the cause of action arose. It is not possible to hold that the word 'of' occurring in Section 138(c) and 142(b) of the N.I. Act is to be interpreted differently as against the word 'from' occurring in Section 138(a) of the N.I. 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 Ex parte Fallon [27] the words 'of', 'from' and 'after' may, in a given case, mean really the same thing.

27. The Apex Court in M/s. Econ Antri Ltd supra further observed that there is no reason for not adopting the rule enunciated in Haru Das Gupta, which is consistently followed

and which is adopted in the General Clauses Act and the Limitation Act. This Court went on to observe that ordinarily in computing the time, the rule observed is to exclude the first day and to include the last. Saketh has been followed by this Court in Jindal Steel and Power Ltd. and Subodh S. Salaskar.

28. In M/S. Econ Antri Ltd supra while answering a reference by resolving the conflict between **Saketh** supra and another expression in **SIL Import, USA v. Exim Aides Silk Exporters, Bangalore**[14] it was ultimately observed referring to several expressions, while holding that SIL Import USA does not lay down the correct law, that **Saketh** supra laid down the correct proposition of law and also held that for the purpose of calculating the period of one month, which is prescribed under Section 142(b) of the N.I. Act, the period has to be reckoned by excluding the date on which the cause of action arose and that any decision which takes a view contrary to the view taken in **Saketh**, which is confirmed **M/S. Econ Antri Ltd supra**, do not lay down the correct law on the question involved in this reference.

29. Having regard to the above, the Division Bench expression of the Calcutta High Court **M/s Auto Trade and Finance Vs. Tusher Kanti Ghosh** not an authority to the issue on hand for the petitioners/accused to place reliance from what it was laid down is to exclude the day when Court closed as per Section 10 GC Act and Section 471 Cr.P.C. and nothing beyond.

30. Coming to the single judge bench expression of the Delhi High Court in 2003 (67 DRJ) in this regard also not an answer.

[14] (1999) 4 SCC 567

31. Coming to the expression of the Apex court in **Dashrath Roopsingh Rathod supra** placed reliance on the ingredients of Section 138 NI Act summed up at Para 31 not in dispute in use of the period of within 30 days but for to answer as above of the day on which the cheque issued is to be excluded. The expression of the Apex Court (3JB) in **Ishar Alloy Steel Limited Vs. Jayaswals Neco Limited**[15] was not an answer to the issue involved on hand but for in interpreting with reference to Sections 2, 3, 72 & 138 what is meant by "the Bank" used therein and if of same meaning for "a bank".

32. Having regard to the above, there is nothing to quash the proceedings for the cheques presented apparently within the period of 6 months from the day on which the respective cheques drawn to be excluded.

33. Accordingly and in the result, all the three Criminal Petitions rather than dismissal, disposed of by left open other defence raised to agitate before the trial Court.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 22.02.2019
Note: L.R. Copy to be marked
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[15] (2001) 3 SCC 609