

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 509 of 2013**

Praveen Kumar Pandey S/o Shri Awadh Kishore Pandey, Aged 37 years, R/o Quarter No. B-3, SECL Dharam Colony, Dharamjaigarh, Bhagat Complex, Kharsiya, Tahsil Kharsiya, District Raigarh, Chhattisgarh.

---Petitioner

Versus

1. Sudeep Kumar Verma, S/o Shri S.P. Verma, Aged 35 years, R/o House No. F27, Marwati Residency, Amlit, Near Mahaveer Nagar, Ahead Piyush Colony, Raipur, District Raipur, Chhattisgarh.
2. State of Chhattisgarh, Through the District Magistrate, Korba, Chhattisgarh.

--- Respondents

For Petitioner	:-	Mr. Alok Kumar Gupta, Advocate
For State	:-	Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

21/01/2021

1. The instant petition is directed against the impugned order dated 10/04/2013 (Annexure A/1) passed by learned Additional Sessions Judge affirming the order dated 03/08/2012 (Annexure

A/3) by which learned trial Magistrate has dismissed petitioner's complaint as barred by limitation.

2. Mr. Alok Kumar Gupta, learned counsel for the petitioner, would submit that the cheque issued by respondent No. 1 in favour of the petitioner stood dishonored for want of sufficient fund in the account of respondent No. 1 on 12/01/2012 and petitioner received the said information on 18/02/2012 after which he informed about the same to respondent No. 1 through e-mail on 22/02/2012. The period of 15 days from 22/02/2012 expired on 07/03/2012 and after excluding that day, one month's time was available to the petitioner to file a complaint which he filed on the 30th day i.e. 07/04/2012 under Section 138 of the Negotiable Instruments Act, 1881, but the said complaint filed by the petitioner has been wrongly dismissed by learned trial Magistrate holding it to be barred by limitation by one day which is absolutely impermissible and bad in law. To buttress his submission, he would rely upon the decision rendered by the Supreme Court in the matter of

M/s Saketh India Limited and Ors. v. M/s India Securities Limited¹.

3. None for respondent No. 1 though served.
4. I have heard learned counsel for the petitioner, considered his submission and went through the records with utmost circumspection.
5. At this stage, it would be appropriate to notice Section 12(1) of the Limitation Act, 1963, which states as under :-

"12. Exclusion of time in legal proceedings. - (1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded."

6. It would also be appropriate to notice Section 9 of the General Clauses Act, 1897, which states as under :-

"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".

(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."

7. The issue involved in the instant petition arose for consideration before the Supreme Court in the matter of M/s Saket India Ltd. (supra) wherein Their Lordships while considering the period of limitation for filing the complaint have held that a period of one month is provided for filing of complaint and while computing the limitation, the last day of the notice of 15 days has to be excluded. Paragraph 7 of the Report states as under :-

"7. The aforesaid 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. Section 12(1) specifically provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. Similar provision is made in sub-section (2) for appeal, revision or review. The same principle is also incorporated in Section 9 of General Clauses Act, 1897 which, inter-alia, provides that in any Central Act made after the commencement of the General Clauses 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'."

8. Reverting to the facts of the present case in light of the aforesaid legal position, it is quite vivid that in the instant case the cheque issued by respondent No. 1 in favour of the

petitioner stood dishonoured for want of sufficient funds and notice in that regard was sent by the petitioner to respondent No. 1 through e-mail on 22/02/2012 which was received by him on the same day. The period of 15 days from 22/02/2012 expired on 07/03/2012 and after excluding the day of 07/03/2012, as provided under Section 12(1) of the Limitation Act and Section 9 of the General Clauses Act and as held by the Supreme Court in M/s Saket India Ltd. (supra), the complaint was required to be filed by 07/04/2012 i.e. within one month from the date on which the cause of action arose, which was rightly filed by the petitioner on 07/04/2012 under Section 138 of the Negotiable Instruments Act, 1881. As such, the impugned order passed by learned Additional Sessions Judge affirming the order passed by learned trial Magistrate dismissing petitioner's complaint under Section 138 of the Negotiable Instruments Act as barred by limitation runs contrary to Section 142(b) of the Negotiable Instruments Act as well as contrary to the decision rendered by the Supreme Court in M/s Saket India Ltd. (supra).

9. Accordingly, the impugned order dated 10/04/2013 passed by learned Additional Sessions Judge as well as the order dated 03/08/2012 passed by learned trial Magistrate are hereby set aside and petitioner's complaint is held to be within limitation and is remitted to the concerned trial Magistrate for its adjudication in accordance with law within six months from the date of appearance of the respondents.

10. With the aforesaid observation/direction, the instant petition under Section 482 of CrPC stands disposed of. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet