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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 608 OF 2013

ALKA JAYESH SHAH AND ORS

....APPLICANTS

V/s.

**BHARATI ASSOCIATES BUILDERS
AND DEVELOPERS AND ORS**

.....RESPONDENTS

**Mr. B. S. Nayak for the applicants
Mrs. Rutuja Ambekar APP for the State**

CORAM : NITIN W. SAMBRE, J.

DATE: NOVEMBER 18, 2021.

P.C.:

1] Heard Mr. Nayak learned counsel appearing for the applicant at length.

2] Proceedings are arising out of acquittal of the respondent for an offence punishable under Section 138 of the Negotiable Instruments Act. Case of the applicant was accepted in toto by the learned Magistrate but for on the issue of limitation, where the Magistrate

held against the applicant on the issue of limitation. Counsel for the applicant would claim that cheques were dishonoured on 07/11th of April 2008, notice of dishonour of cheques issued under the NI Act was served on respondent-accused on 16/05/2008. As such, according to him, limitation should have been counted from 17/06/2008. As such, submissions are, Magistrate committed an error of law. So as to substantiate his claim, he would urge that Magistrate once having taken cognizance, ought not to have gone into the issue of limitation at the time of deciding the complaint on merit.

3] With the assistance, I have perused the observation of the Court below and also Judgments cited by Mr. Nayak in the cases of **Vinayak Vs/ Suhas Padmakar Asukar [2005 CRI. L. J. 218]**, **T. S. Muralidhar V. H. Narayana Singh [2010 Cri. L. J. 3315]**.

4] It is worth to mention here that notice was served on the accused under Section 138 of NI Act on 16/05/2008 and period of 15 days was calculated from 17/05/2008 and not from 16/05/2008.

5] As such, though claimed by learned counsel Mr. Nayak that the period of limitation was considered ignoring the day of service of notice i.e. from 17th May, 2008, the said issue of limitation was correctly considered by the Court of Magistrate while calculating the period of limitation. In the aforesaid background, period of filing of complaint has expired on 30/06/2008 and whereas complaint was presented on 01/07/2008 which is rightly held to be barred by limitation.

6] In the aforesaid background, the view expressed by the Magistrate that complaint was barred by limitation is based on appreciation of factual matrix in the background of scheme of Section 138 of NI Act particularly the date of service of notice, date of filing complaint etc.

7] Apart from above, Magistrate has rightly dealt with the point of limitation on factual merits of the matter, as the issue of limitation is one of the important defence available to the respondent-accused. As such, the contention that once cognizance was taken, the Magistrate

ought not to have gone into the issue of limitation is without any basis and contrary to the scheme of Statute.

8] Both above referred Judgments do not support the case of the applicant on the above issues.

9] That being so, leave stands refused. Application stands disposed of.

[NITIN W. SAMBRE, J.]