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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 28.01.2021

Pronounced on: 01.02.2021

+ **CRL.M.C. 2536/2020 & CRL.M.A. 17950/2020**

SIMRANPAL SINGH SURI Petitioner

Through: Mr. M.S.Oberoi, Mr. Siddharth
Khattar & Mr. Gaurav Rohilla,
Advocates

Versus

STATE & ANR. Respondents

Through: Mr. Izhar Ahmed, Additional Public
Prosecutor for respondent No.1/State
Mr. Anil Kumar Dhupar, Advocate
for respondent No.2/complainant

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. The present petition has been preferred by the petitioner seeking dismissal of complaint case No. 7834/2019, titled as "*Gurbachan Singh Vs. Simranpal Singh Suri*" and for setting aside the order dated 26.09.2019 passed by the learned Metropolitan Magistrate summoning the petitioner in the complaint in question as well as order dated 27.11.2020 passed by the learned Revisional Court upholding the summoning order.

2. As per the complaint, petitioner had borrowed a sum of Rs.10 Lacs, from respondent No.2, who had lent the same vide two cheques bearing Nos. 697399 and 697400, dated 26.02.2016, amounting to Rs.5 Lacs each, drawn on Punjab National Bank, Delhi Trade Finance Branch, Sadar Bazar, Delhi.

It is stated in the complaint that when in April, 2019 i.e. after approximately three years, respondent No.2 approached petitioner for repayment of loan amount, petitioner assured that he will return the entire amount and in order to discharge his part liability, issued a cheque bearing No.032753, dated 01.05.2019, amounting to Rs.10 Lacs, drawn on ICICI Bank, C Block, Janakpuri Branch, New Delhi, which was dishonored on presentation in the bank with the remarks “funds insufficient” and was returned vide bank advice memo dated 22.05.2019. It is the case of complainant that when he informed petitioner about dishonour of the cheque, he paid no heed to his complaint and thereafter, the complainant served a legal demand notice dated 31.05.2019 upon him and despite service of demand notice through speed post as well as approved courier on 03.06.2019, when petitioner failed to make the payment, complaint under Section 138 of NI Act was instituted against the petitioner on 20.07.2019 before the learned Metropolitan Magistrate. The learned Metropolitan Magistrate took cognizance of the offence and vide impugned order dated 26.09.2019 summons were directed to be issued against the petitioner.

3. The order dated 26.09.2019 passed by the Metropolitan Magistrate, was challenged by petitioner vide Criminal Revision Petition No. 762/2019 and the Revisional Court vide impugned order dated 27.11.2020 dismissed the said petition with cost of Rs.50,000/-, which is under challenge in this petition.

4. At the hearing, learned counsel for the petitioner submitted that the learned Metropolitan Magistrate had no jurisdiction to take cognizance of the complaint u/s 138 Negotiable Instruments Act (NI Act) filed by respondent No.2, without that being accompanied by application under

Section 142 (b) NI Act for condoning the delay in filing the complaint. Learned counsel for petitioner further submitted that learned Metropolitan Magistrate, while taking cognizance of the complaint, did not take note of the fact that the complaint was filed beyond the limitation period and did not rightly calculate the days and therefore, direction to issue summons to the petitioner, is illegal and without jurisdiction.

5. In support of his case, learned counsel for petitioner relied upon decision of Hon'ble Supreme Court in **Rameshchandra Ambalal Joshi Vs. State of Gujarat** (2014) 11 SCC 759, which reads as under:-

“21. At this stage, we would also like to refer to Halsbury's Laws of England, Vol. 37, 3rd Edn., Para 143 at p. 83 which provides for calculation of a calendar month:

“143. Calendar month running from arbitrary date.—When the period prescribed is a calendar month running from any arbitrary date the period expires with the day in the succeeding month immediately preceding the day corresponding to the date upon which the period starts; save that, if the period starts at the end of a calendar month which contains more days than the next succeeding month, the period expires at the end of the latter month.”

22. Drawing a conclusion from the abovementioned authorities, we are of the opinion that the use of word “from” in Section 138(a) requires exclusion of the first day on which the cheque was drawn and inclusion of the last day within which such act needs to be done. In other words, six months would expire one day prior to the date in the corresponding month and in case no such day falls, the last day of the immediate previous month. Hence, for all purposes, the date on which the cheque was drawn i.e. 31-12-2005 will be excluded and the period of six months will be

reckoned from the next day i.e. from 1-1-2006; meaning thereby that according to the British calendar, the period of six months will expire at the end of the 30th day of June, 2006. Since the cheque was presented on 30-6-2006, we are of the view that it was presented within the period prescribed.”

6. In addition, learned counsel for petitioner also relied upon Hon’ble Supreme Court’s decision in **SIL Import, USA v. Exim Aides Silk Exporters**, (1999) 4 SCC 567 in support of his case.

7. Learned counsel for respondent No.2/complainant opposed the present petition while submitting that the impugned order is well merited and petitioner has been rightly summoned in the complaint in question and, therefore, the impugned order does not call for any interference by this Court. However, he submitted that the decision in **Rameshchandra Ambalal Joshi (Supra)**, has been rightly relied upon by counsel for petitioner as in the said decision, the Hon’ble Supreme Court has also taken into consideration the British Calender while computing the period prescribed under Section 138 of the NI Act.

8. Learned counsel for second respondent further relied upon decision of Hon’ble Supreme Court in **M/s Saketh India Limited & Ors. Vs. M/s. India Securities Limited** 1999 AIR Supreme Court 1090, wherein the Hon’ble Supreme Court has held as under:-

“5. Afore-quoted Section 138 of the Act inter alia provides that where any cheque drawn by a person is returned by the bank unpaid, such person shall be deemed to have committed an offence, however, it will apply, if the conditions mentioned in clauses (a), (b) and (c) are satisfied. Section 142 further provides that the court shall take cognizance of any offence punishable under Section 138 on

a written complaint made by the payee or the holder in due course, if such complaint is filed within one month of the date on which the cause of action arises. A month is to be reckoned according to the British calendar as defined in the General Clauses Act, 1897. The question would be, whether for calculating the period of one month which is prescribed under Section 142(b), the period has to be reckoned by excluding the date on which the cause of action arose.

6. Similar contention was considered by this Court in the case of Haru Das Gupta v. State of W.B. [(1972) 1 SCC 639 : 1972 SCC (Cri) 368] wherein 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. In the context of that case, the Court held that in computing the period of three months from the date of detention, which was 5-2-1971, before the expiration of which the order or decision for confirming the detention order and continuing the detention thereunder had to be made, the date of the commencement of detention, namely, February 5th has to be excluded; so done, the order of confirmation dated 5-5-1971 was made before the expiration of the period of three months from the date of detention. The Court held that there is no reason why the aforesaid rule of construction followed consistently and for so long should not be applied. For the aforesaid principle, the Court referred to the principle followed in English courts. The relevant discussion is hereunder: (SCC p. 641, para 5)

“5. These decisions show that courts have drawn a distinction between a term created within which an act may be done and a time limited for the doing of an act. 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. (See *Goldsmiths' Co. v. West Metropolitan Rly. Co.* [(1904) 1 KB 1, 5 : 72 LJKB 931 : 89 LT 428] , KB at p. 5.) This rule was followed in *Cartwright v. MacCormack* [(1963) 1 All ER 11, 13 : (1963) 1 WLR 18] : All ER at p. 13, where the expression 'fifteen days from the date of commencement of the policy' in a cover note issued by an insurance company was construed as excluding the first date and the cover note to commence at midnight of that day, and also in *Marren v. Dawson Bentley & Co. Ltd.* [(1961) 2 QB 135 : (1961) 2 All ER 270] , a case for compensation for injuries received in the course of employment, where for purposes of computing the period of limitation the date of the accident, being the date of the cause of action, was excluded. (See also *Stewart v. Chapman* [(1951) 2 KB 792 : (1951) 2 All ER 613] and *North, Re, ex p Hasluck* [(1895) 2 QB 264 : 64 LJQB 694] .) Thus, as a general rule the effect of defining a 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. [See *Halsbury's Laws of England*, (3rd Edn.), Vol. 37, pp. 92 and 95.] There is no reason why the aforesaid rule of construction followed consistently and for so long should not also be applied here."

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 the 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. Hence, there is no reason for not adopting the rule enunciated in the aforesaid case which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act. Ordinarily in computing the time, the rule observed is to exclude the first day and to include the last. Applying the said rule, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer expires. The period of 15 days in the present case expired on 14-10-1995. So cause of action for filing complaint would arise from 15-10-1995. That day (15th October) is to be excluded for counting the period of one month. Complaint is filed on 15-11-1995. The result would be that the complaint filed on 15th November is within time.”

9. I have heard learned counsel appearing on behalf of both the sides and gone through the impugned orders and decisions relied upon by them.

10. The Revisional Court while passing the impugned order, has held as under:-

“16. It is seen that the complainant sent demand notice dated 31.05.2019 by way of speed post and courier on 01.06.2019. As per tracking report, as admitted by the petitioner, the petitioner received the demand notice via speed post on 03.06.2019. Therefore, the notice period of 15 days for making payment of the cheque amount lapsed on 18.06.2019. The cause of action for filing of the

complaint accrued to the complainant on 19.06.2019. As provided under Section 12 of the Limitation Act and held in the judgment in 'M/S Saketh India Ltd. (Supra), the period of one month for filing complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of receipt of the notice by drawer, expires. As such, the day 19.06.2019 is to be excluded for counting the period of one month. The complaint was filed on 20.07.2019 within one month from the date of accrual of cause of action on 20.06.2019.'

11. A full Bench of Hon'ble Supreme Court in ***Econ Antri Ltd. v. Rom Industries Ltd.***, (2014) 11 SCC 769, while deciding the issue of calculation of limitation period with regard to proviso (c) to Section 138 and Section 142(b) of the Negotiable Instruments Act, 1881, has held as under:-

"42. Having considered the question of law involved in this case in proper perspective, in the light of relevant judgments, we are of the opinion that Saketh [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 : 1999 SCC (Cri) 329] lays down the correct proposition of law. We hold that for the purpose of calculating the period of one month, which is prescribed under Section 142(b) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. We hold that SIL Import, USA [SIL Import, USA v. Exim Aides Silk Exporters, (1999) 4 SCC 567] does not lay down the correct law. Needless to say that any decision of this Court which takes a view contrary to the view taken in Saketh [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1] by this Court, which is confirmed by us, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly."

12. In terms of dictum of Full Bench of Hon'ble Supreme Court in ***Econ Antri Ltd. (Supra)***, the ratio of decision in ***M/S Saketh India Ltd. (Supra)***,

has to be applied to the case in hand.

13. The crux of the present case is that legal demand notice dated 31.05.2019 was sent on 01.06.2019, which was duly served upon the petitioner on 03.06.2019. The 15 days notice period in this case commenced on 04.06.2019 and lapsed on 18.06.2019. It is not in dispute that in terms of Hon'ble Supreme Court's decision in *M/S Saketh India Ltd. (Supra)*, one day has to be excluded for counting the one month limitation period and, therefore, excluding the day of 19.06.2019, the limitation period started from 20.06.2019 and the limitation period expired with the day in the succeeding month immediately preceding the day corresponding to the date upon which the period started. Consequently, the limitation period in this case, which commenced on 20.06.2019, expired in the succeeding month on a day preceding the date of commencement i.e. 19.07.2019. Admittedly, the complaint in this case was instituted on 20.07.2019 i.e. 01 day after the limitation period had expired. Hence, both the courts below have fallen in error while computing the period of limitation. Moreover, at the time of filing, the complaint was not even accompanied by an application under Section 142 (b) NI Act for condoning the delay.

14. In addition to above, the learned Revisional Court in the impugned order has also held as under:-

"17. In any other case, the demand notice dated 31.05.2019 sent by way of courier, as per tracking report, was received by the petitioner on 05.06.2019 and as such, the notice period of 15 days expired on 20.06.2019 and excluding the following day i.e. 21.06.2019, the complaint filed on 20.07.2019 is within limitation period of one month."

15. It is pertinent to mention here that on one hand, Revisional Court in

Para-16 of the impugned order (as extracted in Para-10 of this order) has held that as per tracking report and as admitted, petitioner had received the demand notice on 03.06.2019 and on the other hand, in Para-17 the Revisional Court has observed that as per tracking report, the demand notice was received by petitioner on 05.06.2019 and so, the complaint is filed within the limitation period. Revisional Court has erroneously taken into consideration two different dates for service of demand notice while computing the limitation period. It is an admitted fact that the demand notice was served upon petitioner on 03.06.2019 and so, Revisional Court was not required to take into consideration the tracking report showing service of demand notice on 05.06.2019 to justify that the complaint was filed within the limitation period.

16. In view of the aforesaid, this petition succeeds and impugned order dated 27.11.2020 passed by the Revisional Court as well as order dated 26.09.2019 passed by Metropolitan Magistrate, are hereby set aside.

17. The petition is, accordingly, disposed of.

18. Pending application also stands disposed of.

19. A copy of this order be sent to the Revisional Court/trial court concerned for necessary information and compliance.

20. The order be uploaded on the website of this Court forthwith.

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 01, 2021

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