

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 523 of 2020

M/S. N. A. Organic Works & Ors.

Vs.

S. Dasgupta & Associates

For the petitioners : Mr. Tarique Quasimuddin,
Mr. Ram Narain Rajak.

For the Opposite Party : Mr. Kamal Krishna Lahiri,
Mr. Somnath Maiti.

Hearing concluded on : 01.08.2023

Judgment on : 24.08.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an Order dated 17.12.2019 passed by the learned Additional Sessions Judge, F.T.C.-2, City Sessions Court, Bichar Bhawan at Kolkata in Criminal Appeal No.124 of 2018, arising out of Complaint case no.26691 of 2011 under Sections 138/141 of the Negotiable Instruments Act, 1881, as amended thereunder thereby dismissing the said Criminal Appeal on contest and affirming the Order dated 04.01.2018 passed by the learned Metropolitan Magistrate, 17th Court at Calcutta in connection with Complaint Case No.26691 of 2014 under Section 138 of the Negotiable Instruments Act and Judgment and Order dated 04.01.2018 passed in complaint case no.26691 of 2011 under

Sections 138/141 of the Negotiable Instruments Act, 1881 by the learned Metropolitan Magistrate, 17th Court at Calcutta.

2. The petitioner's case is that the petitioner no.1 is a partnership firm having its office at P-27, Princep Street, Police Station-Hare Street, Kolkata-700 072, duly represented by its partners namely Mr. Niaz Ahjmed and Mrs. Indrani Chakraborty, being the petitioner no.2 and 3 herein.

3. The petitioners were placed on trial in complaint case no.26691 of 2011 under Section 138/141 of the Negotiable Instruments Act, 1881.

4. By the Judgment and Order dated 04.01.2018 passed by the learned Metropolitan Magistrate, 17th Court at Calcutta in complaint case no.26691 of 2011 under Sections 138/141 of the Negotiable Instruments Act, 1881, as amended thereunder the petitioners were convicted and sentenced to pay compensation of Rs.50,000/- to the complainant within one month in default to suffer simple imprisonment for one month each.

5. Being aggrieved by and dissatisfied with the judgment and order of conviction dated 04.01.2018, the petitioners preferred an appeal, before the learned Chief Judge, City Sessions Court, Bichar Bhawan at Kolkata being Criminal Appeal No.124 of 2018.

6. Vide order dated 17.12.2019, the learned Additional Sessions Judge, F.T.C.-2, City Sessions Court, Bichar Bhawan at Kolkata was pleased to dismiss the said Criminal Appeal No.124 of 2018 on contest.

7. **Mr. Tarique Quasimuddin, learned counsel for the petitioners** has submitted that the learned trial court while passing the impugned order dated 17.12.2019 failed to consider that no liability arose in order to attract

the impugned proceeding under Section 138 of the Negotiable Instruments Act and thus, the impugned order is liable to be set aside.

8. It is further submitted that the learned trial court while passing the impugned order dated 17.12.2019 failed to consider that the complainant committed gross neglect in discharging its professional duties as a Chartered Accountant and thus the impugned order is liable to be set aside.

9. The learned trial court while passing the impugned order dated 17.12.2019 failed to consider that the cheques were issued as a security and not towards the discharge of legal debts and liabilities and thus the impugned order is liable to be set aside.

10. The learned trial court while passing the impugned order dated 17.12.2019 has incorrectly held that the issue of limitation cannot be considered in the appeal stage as it was not raised during trial and thus the impugned order is liable to be set aside.

11. The learned trial court while passing the impugned order dated 17.12.2019 failed to consider that the proceeding under Section 138 of the Negotiable Instrument Act was barred by Limitation Act and thus the impugned order is liable to be set aside.

12. The learned trial court while passing the impugned order dated 17.12.2019 failed to consider the definition of 'Month' in the General Clauses Act and thus the impugned order is liable to be set aside.

13. The judgment is otherwise bad in law and liable to be quashed and/or set aside.

14. **A written notes of argument** has been filed by the petitioners wherein it has been stated that the complainant was engaged to deal with

all direct and indirect taxes, he admitted that he did not file any documents to the show that he was present before the Joint Commissioner Dharmatala Circle. That he did not appear on most of the days particularly on 03.05.2014 before the Joint Commissioner Dharmatala Circle. The accused issued the cheque to the complainant but he did not appear on dates and exparte order was passed against her. She further deposed that she paid cash of Rs.10,000/- (Rupees Ten Thousand) only to the complainant against cheque, money receipt of Rs.10,000/-(Rupees Ten thousand) only dated 27.06.2011 is marked as Exhibit-'A'.

15. She further deposed that the complainant used to look after works related to tax but did not appear in the tax related matter of the complainant on various dates in 2010, as a result of which exparte order was passed.

16. She also deposed that the complainant used to keep books of accounts and other valuable accounts, in tax related matter and subsequently refused to hand over the various documents for which the petitioner herein faced trouble in filing appeal. Then there was a settlement and she received some documents against which she paid cash of Rs.10,000/-(Rupees Ten thousand) only **as professional remuneration** but did not receive the balance documents.

17. The complainant without returning the balance document and not discharging his professional obligation, deposited the set-forth security cheque which got dishonored.

18. It is stated that there is nothing to show that any specific question was put by the complainant thereby rebutting and/or disproving his

absence in the Sales Tax proceeding. The complainant will also not able to demonstrate that he had discharged his professional obligation as Chartered Accountant.

19. The next contention of the petitioner is that the complainant issued demand notice under Section 138(b) of Negotiable Instruments Act, 1881 on 24.09.2011 thereby giving fifteen day time to the accused person to clear the dues. The said Notice was received on 28.09.2011, the cause of action therefore starts from 28.09.2011 and the 15 days expired on 12.10.2011. The time to file petition of complaint starts from 13.10.2011 and the 30 days/one month expired on 11.11.2011 which was a Friday and hence the respondent cannot take the plea of validity. The complainant has filed the application under Section 138 of Negotiable Instruments Act, 1881 before the learned Magistrate on 14.11.2011 i.e. 2(two) days after the expiry of prescribed time provided in statute.

20. There is nothing in the record to show that an application under Section 142(b) of the Negotiable Instruments act, 1881 was filed and/or moved by the complainant in the trial court, hence the proceeding under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner herein had become in fructuous and/or illegal and/or invalid.

21. It is further stated that Section 9 of the General Clauses Act, 1897 says:-

“That it is a settled law that if the expression in such context regarding the receipt of the Notice says “from the date” or “of the date” then the computation of the date shall be excluding the day of the receipt but in the proceeding under Section 138 of the Negotiable Instruments Act, 1881 the expression is within 15 days of the receipt of the Notice and hence for the purpose of

computation the date shall be including the date of the receipt of the notice.”

22. The following judgments have been relied upon by the petitioners:-

- i. **Sadanandan Bhadran vs Madhavan Sunil Kumar, (1998) 6 SCC 514.**
- ii. **AIR 1999 SC 1090.**
- iii. **Sil Import, USA vs Exim Aids Silk Exporters, Bangalore, (1999) 4 SCC 567.**
- iv. **Suman Sethi vs Ajay K. Churiwal and Anr., (2000) 2 SCC 380.**
- v. **Uniplas India Ltd. and Ors. vs State (Govt. of NCT of Delhi) and Anr., (2001) 6 SCC 8.**
- vi. **Srikanth P. Hutagee v. Gangahdar S. Hutagekar, (2005) 1 BANKJ 115.**
- vii. **Subodh S. Salaskar v. Jayprakash M. Shah and Anr., AIR 2008 SC 3086.**
- viii. **Sivakumar vs Natarajan, (2009) 13 SCC 623.**
- ix. **ECON Antri Ltd. v. ROM Industries Ltd. and Anr., 2013 Cri. L. J. 4195.**
- x. **Peddireddy Sanjeeva Reddy v. State of A.P. & Anr., 2015 ACD 62 (HYD).**
- xi. **Abdul Jakir v. State of U.P., AIRONLINE 2020 ALL 1628.**

23. **Mr. Kamal Krishna Lahiri, learned counsel for the opposite party** has submitted on filing the written notes of argument on behalf of the opposite party that the petitioners are mostly concerned about the point of limitation alleging that the complaint case is barred by limitation as it was

not filed in accordance with Section 142(b) of the N.I. Act within the prescribed time. Most of the grounds for grievance (Ground nos.VII, VIII, IX, X) are directed against such point and much stress was given on that while making arguments, both at the appeal court as also before this Hon'ble Court on 12.02.2019 and 05.06.2023. Although in the court of the appeal the learned advocate on behalf of the complainant/opposite party no.2 argued in his own way to controvert the accused appellants' contention that one month means 30 days of a calendar month according to General Clauses Act and that the point of statutory limitation can be raised as a point of law at any stage even if not raised at the initial stage of trial.

24. It is further submitted that it appears from the judgment dated 04.01.2018 of the learned Magistrate that this point was in fact considered as Point No.8 and afterwards observed that the complainant filed the instant case within time.

25. There must have been reasons for which the learned Judge had been so sure regarding his observation that the case was filed within time without any apparent objection having been raised from the opposite side.

26. Admittedly the notice under Section 138 of the N.I. Act issued by the complainant's Advocate on 24.09.2011 was received by the accused on 28.09.2011. 15 days from the following day (29.09.2011) ended on 13.10.2011. Thereafter the filing time for thirty (30) days calculated from 14.10.2011 continued upto 12.11.2011, which was a holiday (being the 2nd Saturday of November) in that particular year. The following day (13.11.2011) being the Sunday, the next working day was 14.11.2011, on which the complaint was admittedly filed.

27. It is also submitted that at the relevant time of actual filing of the complaint petition, the applicability of the provisions of Section 142(b) of N.I. Act must have been duly considered to the satisfaction of the court of trial, and the reason for not raising any objection regarding the purported limitation is thus perceptible, at the time of hearing of the appeal, which occurred after more than eight years. This infallibility regarding coverage of actual period of limitation did not appear to have struck anybody. Hence, there was no delay in filing the complaint as alleged by the accused petitioners.

28. Hence applying the principle cited hereabove, it can be very well submitted that there was no delay in filing the present complaint case.

29. It is further submitted that the monotonous plea of issuing cheques as security and not for the reason of discharging legal liability, has been clearly discarded by the trial court by considering the same as Point No.3 of the judgment and indicated its worthlessness in view of the fact that the cheques-in-question were issued upon a settlement arrived between the parties regarding balance/final payment of professional fees of the complainant (Exhibit No.11, page no.5 of the judgment). The learned Judge has laboriously explained about legally enforceable liability in his judgment. That apart oral evidence of DW-2 as recorded in this regard clearly indicated their malafide.

30. Mr. Lahiri has relied upon the following judgment:-

(a) *M/s. Saketh India Ltd. vs M/s. India Securities Ltd., AIR 1999 SC 1090, Criminal Appeal Nos. 288-289 of 1999 (SLP (Cri.)*

Nos. 262-263 of 1998) on 10.03.1999, wherein the Supreme Court held:-

“3. In the present case, cheques dated 15-3-1995 and 16-3-1995 issued by the appellants bounced when presented for encashment as per the bank endorsement. Notices were served on the accused on 29-9-1995. As per Section 138(c) the accused were required to make payment of the said amount of money within 15 days. The accused failed to pay the said amount, hence the cause of action for filing the complaint arose from 15-10-1995. Complaints were filed on 15-11-1995. Therefore, it is contended that the complaints were filed beyond time. The accused-petitioners approached the High Court by filing petition under Section 482 of the Criminal Procedure Code for quashing and setting aside the process issued by the XIth Additional Chief Metropolitan Magistrate, Bangalore. Those petitions were rejected by the High Court by common order and judgment dated 25-9-1997. Hence, these appeals.

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.”

31. The contention of the opposite party/complainant that the point of limitation has been raised by the petitioner for the first time before the High Court, though it was not raised either before the trial court nor the appellate court is answered by the Supreme Court in **Pawan Kumar Ralli vs Maninder Singh Narula, Criminal Appeal No. 1684 of 2014, arising**

out of SLP (Crl.) No. 8924 of 2013, on August 11, 2014, wherein the court held:-

“20. However, when the issue of limitation has come up for the first time before the High Court, it ought to have dealt with the same on merits as per proviso to Section 142(b) of the Act. The said proviso appended to clause (b) of Section 142 of the Act was inserted by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 and the legislative intent was, no doubt, in order to overcome the technicality of limitation period. The Statement of Objects and Reasons appended to the Amendment Bill, 2002 suggests that the introduction of this proviso was to provide discretion to the Court to take cognizance of offence even after expiry of the period of limitation [See **MSR Leathers Vs. S. Palaniappan** (2013) 1 SCC 177]. Only with a view to obviate the difficulties on the part of the Complainant, Parliament inserted the proviso to clause (b) of Section 142 of the Act in the year 2002. It confers a jurisdiction upon the Court to condone the delay [See **Subodh S. Salaskar Vs. Jayprakash M. Shah** (2008) 13 SCC 689].

21. It is no doubt true that at the time of filing the complaint, the Magistrate has to take cognizance of the complaint when it is within limitation and in case of delay in filing the complaint, the complaint has to come up with the application seeking condonation of delay. But, the peculiar fact of the present case is that in the complaint, the complainant had only averred that he has sent the legal notice dated 24th May, 2012 but not mentioned about the handwritten note dated 27th April, 2012. Basing on the said averment, the learned Trial Judge was satisfied that the complaint is within the prescribed period of limitation. Hence, in this case, raising the plea of limitation and Court exercising the discretion to condone the delay did not arise at all.”

Therefore, the petitioner raising the point of limitation at any stage is permissible.

32. The petitioners/accuseds next contentions are as follows:-

i) That the complaint under Section 138 N.I. Act is barred by limitation (delay of two days). No application under Section 142(b) of N.I. Act has been filed praying for condonation of such delay.

ii) That the cheque in question was given as security and that it had not been issued against any debt or liability and that the presumption under Section 139 of N.I. Act has been successfully rebutted by the petitioner in her evidence.

iii) The professional fees of the complainant amounting to Rs.10,000/- has been paid in cash, as deposed by the petitioner as D.W-1.

33. Regarding point no.(i) keeping with the guidelines of the Supreme Court in *M/s. Saketh India Ltd. vs M/s. India Securities Ltd., AIR 1999 SC 1090, Criminal Appeal Nos. 288-289 of 1999 (SLP (Cri.) Nos. 262-263 of 1998) on 10.03.1999*, the calculation of the period of limitation is being shown as follows for comparison.

In M/s. Saketh India Ltd. (Supra)	In the present case
a) notice served on 29.9.1995.	a) notice served on 28.9.2011.
b) Period of 15 days expired on 14.10.1995.	b) Period of 15 days from 29.09.2011 expired on 13.10.2011.
c) cause of action arose on 15.10.1995.	c) cause of action arose on 14.10.2011.
d) 15.10.1995 is to be excluded for counting the period of one month.	d) 14.10.2011 to be excluded.
e) Held complaint filed on 15.11.20199 is within time.	e) period of 30 days on 13.11.2011(Sunday). So complaint filed on 14.11.2011 is within time.

34. **The complaint is thus not barred by limitation.**

35. Regarding point no. (ii) and (iii). Admittedly, there was a dispute regarding payment of professional fees.

36. The petitioner's case is that as the complainant did not discharge his duty, he was not entitled to any fees. It is further stated by the petitioner that **Rs.10,000/- has been paid to complainant towards his fees.**

37. In **Sunil Todi & Ors. vs The State of Gujarat & Anr., Criminal Appeal No. 1446 of 2021, on 3 December, 2021**, the Supreme Court held:-

“25. The explanation to Section 138 of the NI Act provides that ‘debt or any other liability’ means a legally enforceable debt or other liability. The proviso to Section 138 stipulates that the cheque must be presented to the bank within a period of six months from the date on which it is drawn or within its period of validity. Therefore, a cheque given as a gift and not for the satisfaction of a debt or other liability, would not attract the penal consequences of the provision in the event of its being returned for insufficiency of funds. Aiyar’s Judicial Dictionary defines debt as follows: “Debt is a pecuniary liability. A sum payable or recoverable by action in respect of money demand.” Lindey L.J in Webb v. Strention 15 defined debt as “... a sum of money which is now payable or will become payable in the future by reason of a present obligation, debitum in praesenti, solvendum in futuro.” The definition was adopted by this Court in Keshoram Industries v. CWT 16. Justice Mookerjee writing for a Full Bench of the Calcutta High Court in Banchharam Majumdar v. Adyanath Bhattacharjee¹⁷ adopted the definition provided by the Supreme Court of California in People v. Arguello 18:

“Standing alone, the word ‘debt’ is as applicable to a sum of money which has been promised at a future day as to a sum now due and payable. If we wish to distinguish between the two, we say of the former that it is a debt owing, and of the latter that it is a debt due. In other

words, debts are of two kinds: solvendum in praesenti and solvendum in future ... A sum of money which is certainly and in all events payable is a debt, without regard to the fact whether it be payable now or at a future time. A sum payable upon a contingency, however, is not a debt or does not become a debt until the contingency has happened.” Thus, the term debt also includes a sum of money promised to be paid on a future day by reason of a present obligation. A post-dated cheque issued after the debt has been incurred would be covered by the definition of ‘debt’. However, if the sum payable depends on a contingent event, then it takes the color of a debt only after the contingency has occurred. Therefore, in the present case, a debt was incurred after the second respondent began supply of power for which payment was not made because of the non-acceptance of the LCs’. The issue to be determined is whether Section 138 only covers a situation where there is an 1888 QBD 518 AIR 1966 SC 1370 (1909) ILR 36 Cal 936 1869 37 Calif 524 outstanding debt at the time of the drawing of the cheque or includes drawing of a cheque for a debt that is incurred before the cheque is encashed.”

38. **In the present case** the total amount of the four dishonored cheques is Rs.32,500/-. The compensation granted in favour of the complainant is Rs.50,000/-. It is thus clear that the cheques were issued in discharge of liability towards payment of fees part of which was paid (Rs. 10,000) and the petitioner has not been able to rebut the presumption under Section 139 as admittedly professional fees was due to the complainant for discharge of his professional duty. The cheque was issued towards that liability of professional fees.

39. The petitioner’s further contention is that the cheque was given as **security**.

40. The Supreme Court in **Sunil Todi & Ors. vs The State of Gujarat & Anr., (Supra)** further held:-

“22. In a more recent judgment of a two judge Bench in Sripati Singh v. State of Jharkhand 14, an order of the Magistrate taking cognizance and issuing (2015) 11 SCC 776 2021 SCC OnLine SC 1002 summons on a complaint under Section 420 IPC and Section 138 of the NI Act was challenged before the High Court. There was a transaction between the second respondent and the complainant pursuant to which the appellant had advanced sums of money. Several cheques were handed over but they were dishonored on presentation. The High Court allowed the petitions. An appeal was filed before this Court. Before this Court, the appellant urged that a cheque issued towards discharge of the loan and presented for recovery could not be construed as a security for the transaction. In appeal, this Court noted that there were four loan agreements under which the second respondent agreed to pay a total sum of Rs 2 crores and six cheques were issued as security. The High Court had held that since under the loan agreement the cheques were given by way of security, the complaint could not be maintained. Justice AS Bopanna, speaking for the two judge bench, adverted to the earlier decision in Indus Airways and the distinguishing features which were noticed in the decision in Sampelly. The Court held that where in the case of a loan transaction, the borrower agrees to repay the amount in a specified time frame and issues a cheque as a security to secure the repayment and the loan is not repaid, the cheque which is issued as security would mature for presentation. The Court observed:

***“17. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. ‘Security’ in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same.*”**

On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.” Moreover, as the Court explained:

“18. When a cheque is issued and is treated as ‘security’ towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as ‘security’ cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in a proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an ‘on demand promissory note’ and in all circumstances, it would only be a civil litigation to recover the amount, which is not the intention of the statute.

When a cheque is issued even though as ‘security’ the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation.” The complaint, insofar as it invoked the provisions of Section 138 of the NI Act, was accordingly restored to the Judicial Magistrate to proceed in accordance with law.”

41. **In the present case,** the cheque was issued towards the complainant's professional fees and the petitioner has admitted paying a sum of only Rs. 10,000/-.

42. **Thus, considering the materials on record** and in view of the discussions made, the judgment under revision being in accordance with law, needs no interference by this court.

43. The Order dated 17.12.2019 passed by the learned Additional Sessions Judge, F.T.C.-2, City Sessions Court, Bichar Bhawan at Kolkata in Criminal Appeal No.124 of 2018, arising out of Complaint case no.26691 of 2011 under Sections 138/141 of the Negotiable Instruments Act, 1881, as amended thereunder thereby dismissing the said Criminal Appeal on contest and affirming the Order dated 04.01.2018 passed by the learned Metropolitan Magistrate, 17th Court at Calcutta in connection with Complaint Case No.26691 of 2014 under Section 138 of the Negotiable Instruments Act and Judgment and Order dated 04.01.2018 passed in complaint case no.26691 of 2011 under Sections 138/141 of the Negotiable Instruments Act, 1881 by the learned Metropolitan Magistrate, 17th Court at Calcutta, **is hereby affirmed.**

44. **The revisional application being CRR 523 of 2020 is dismissed.**

45. **Petitioners to appear before the trial court within a month from this date to comply with the sentence as passed by the trial court, in default, to serve out the sentence in default of payment of compensation.**

46. All connected applications, if any, stands disposed of.

47. Interim order, if any, stands vacated.

48. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

49. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)