

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 535 of 2001

M/s Magma Leasing Limited

-Vs-

M/s Jindal Steel Products & Ors.

Amicus Curiae : Mr. Ramasish Mukherjee

For the Opposite Party No.1 : Mr. Abhirup Chakraborty

Heard on : 26.04.2023, 8.06.2023

Judgment on : 29.09.2023

Ananya Bandyopadhyay, J.:-

1. This instant criminal appeal is preferred by the petitioner against the judgment and order of acquittal dated 27.08.2001 passed in Case No. 2136 of 1996 by the Learned Metropolitan Magistrate, 9th Court, Kolkata acquitting the accused from charges under Section 138/141 of the Negotiable Instruments Act.
2. The appellant company through its responsible officer and authorized representative Sri Panjak Kumar Trivedi filed and moved a petition of complaint under Section 138/141 of the Negotiable Instruments Act against

the respondents No. 1, 2 and 3 and two others against whom the petitioner subsequently withdrew the case.

3. The Learned Magistrate took cognizance and transferred the case to the Court of Learned 9th Magistrate for disposal.
4. Process was issued against the accused persons, who entered appearance and pleaded not guilty to the charge. On completion of hearing, the Learned Magistrate was pleased to pass the impugned order of acquittal in favour of the said respondents.
5. The petitioner contended that the impugned order was devoid of any legal sanctity, totally unreasonable and thus should be set aside by this Court.
6. The petitioner further stated that although out of five points for consideration, the Learned Magistrate considered only the last point i.e. whether the case was filed within the time prescribed under the said Act and held the same to be barred by limitation under Section 142 of the said Act and thereby acquitted the respondents.
7. The petitioner stated that the Learned Magistrate in the impugned order and judgment observed that when the notice was served on accused on 4.10.1996 and on such non-compliance by 19.10.1996 the petitioner was required under Section 142 of the said Act to file the petition of complaint by 19.11.1996 whereas the same was filed on 22.11.1996.
8. The petitioner stated that the said petition of complaint was filed within 30 days of receipt of the said unserved refused envelope containing the said

notice from the postal department by the petitioner's Advocate who sent the said notice.

9. The petitioner stated that it was not possible for the appellant to ascertain and/or to know about the date of refusal by the respondents until the same was returned by the postal department.
10. The petitioner thus submitted that the complaint was filed within the period of limitation and as such the impugned order of acquittal on such observation by the Court below is utterly bad in law, invalid and non est in law.
11. The Learned Advocate for the petitioner submitted that:
 - i. The Learned Magistrate in Court below failed to appreciate the facts and circumstances of the case and also erred in law and passed the impugned order and judgment wrongfully and illegally.
 - ii. The Learned Magistrate in court below failed to appreciate that the appellant filed the present complaint within the statutory period of limitation of one month as provided under Section 142 of the said Act in the light of the express observations made by this Hon'ble Court in 1993 Cal.Cri.L.R. 236 from the date of his knowledge of the unserved envelope from the postal department and passed the impugned order and judgment wrongly and illegally.
 - iii. The Learned Magistrate failed to appreciate that, the words of Section 138 (C) of the said Act read with Section 142 of the Act should be made to mean within one month from the knowledge of the sender

about the receipt of the notice by the notice and as such the complaint was filed well within the said statutory period of one month of knowledge about such non-service and passed the impugned order and judgment of acquittal wrongly and arbitrarily.

- iv. The Learned Magistrate also failed to appreciate that the appellant as well as all the parties and the court below were under the strictest obligation to be bound by the expressed observations of this Hon'ble Court in the case reported in 1993 Cal.Cri.L.R. 236 holding candidly that the said date of one month must be computed from the date of knowledge of the appellant of service and/or non-service and not from the date of refusal by the accused and passed the impugned order arbitrarily and illegally.
- v. The Learned Magistrate also failed to appreciate it was not possible for the petitioner to know of the date of refusal of notice by the accused unless the postal department returned the unserved envelope and so could not file the complaint without such knowledge of service or refusal and passed the impugned order unreasonably and illegally.
- vi. The Learned Magistrate failed to consider that, unless and until the said Judgment of this Hon'ble Court was overruled by the subsequent decision in 2001 in Darshan Singh's case, the ratio and effect of the said decision had a binding effect upon all the subjects in this State including the petitioner, the accused persons and also the

subordinate courts including the court below and passed the impugned order arbitrarily and fancifully.

- vii. The Learned Magistrate ought to have held that the complaint was filed within the period prescribed under Section 142 of the said Act in the light of the express observations of this Hon'ble Court in 1993 Cal.Cri.L.R. 236 and ought not to have passed the impugned order arbitrarily and illegally.
- viii. The Learned Magistrate failed to consider that the said Judgment of this Hon'ble Court reported in 1993 Cal.Cri.L.R. 236 even if dissented with by the subsequent decision on 2001 did not lose its binding effect on the subjects and the courts below and the courts below during the subsistence of the said decision were bound to follow the same. The later decision does not in any manner bear the retrospective effect to dig out the act practiced much earlier under the mandatory effect of the previous aforesaid decision and passed the impugned order and judgment wrongly and illegally.
- ix. The Learned Magistrate ought to have passed an order of conviction and sentence against the respondents and ought not to have passed the impugned order and judgment when admittedly there was absolutely no notches or negligence on the part of the appellant in any manner in filing the complaint.
- x. The impugned order of acquittal even otherwise is bad in law and liable to be set aside in appeal by this Hon'ble Court in limine.

12. The Learned Advocate for the opposite party no. 1 submitted that the Learned Magistrate considering the evidence as well as legal provision enumerated in Section 138 and Section 142 of Negotiable Instrument Act was justified in passed an order of acquittal. Therefore the appeal should be dismissed.
13. The assessment of the prosecution as well as defence witnesses are as follows:
 - i. PW-1 in his deposition stated that he was a Senior Manager of the Allahabad Bank Industrial Finance Branch in Calcutta and the petitioner, M/S Magma Leasing Limited was a client holding an account in the said bank. PW-1 deposed that cheque no. 699607 for Rs. 49,982/-, cheque no. 699608 for Rs. 49,982/- and cheque no. 699611 for Rs. 49,982/- was deposited in the Allahabad Bank. These cheques were encashed in Union Bank of India, Strand Road Branch. The cheque nos. 699608 and 699609 were entered in the bank's ledger on 31/8/96. These cheques were returned unpaid on 2/9/96. The cheque no. 699611 was entered in the bank's ledger on 3/9/96 and it was dishonored on 5/9/96. The statement of P.W. 1 was marked as Exhibit-1. The 3 cheques were marked as 'X', 'Y' and 'Z' for identification. Two return memos were issued by the Union Bank of India for these cheques.
 - ii. PW-1 in his cross examination stated that –

“The term of ‘payment-stop by the owner’ means who issued the cheques, directed not to encash the cheque or cheques. If there were sufficient fund in his account, then he can also stop the payment.”

- iii. PW-2 in his deposition stated that he was the Assistant Branch Manager of Union Bank of India, Strand Road Branch and the respondent, Jindal Steel Product had an account in the said bank. PW-2 deposed 3 cheques were issued by the branch of Union Bank of India. The cheque nos. were 699611, 699609 and 699608. The said cheques were issued in favour of Magma Leasing Limited. These 3 cheques were dishonored due to payment stopped by the drawer. The opening balance at the time of this incident, in the month of June was Rs. 2531.78/- and on 1/7/96, the balance was Rs. 2501.78/- and in the month of September, the amount was Rs. “612.88”. The return Memos were issued by the said bank and were marked as Exhibit-2 series collectively. The 3 cheques were marked as Exhibit-3 series collectively. The statements of the account of the respondent for the period of 1/6/96 to 30/9/96 were certified by PW-2 and marked as Exhibit-4 series collectively.
- iv. PW-2 in his cross examination stated that he could not mention the reason as to why the respondent made a “stop-payment”.
- v. PW-3 in his deposition stated that he was the authorized representative of the complainant company by virtue of a Board

Resolution. The copy of Board Resolution was signed by Mr. Sanjoy Chamariya who was the director of the complainant company. PW-3 verified his signature and hand writing which was marked as Exhibit 6. PW-3 had filed this case against 5 accused persons, subsequently the case was dropped against accused persons no. 4 and 5. The accused persons no. 2 and 3 looked after the affairs and business of accused person no. 1. The accused person no. 1 issued the cheques in favour of the complainant. P.W. 3 mentioned that accused person no. 2 was the partner of accused person no. 1 and discharged his liabilities on 14/10/93. P.W. 3 also mentioned that a legal demand notice was issued through Ld. Lawyer Mr. Amitabh Das demanding the total amount of Rs. 1,49,946/- which was signed by PW-3, marked as Exhibit-7. The post receipts were marked as Exhibit-8 series collectively. *"The notices were returned to the sender unsent with an endorsement of postal peon 'unclaimed'". These notices along with A/D Cards were marked as Exhibit-9 collectively.* Thereafter the instant case was filed and signed by P.W. 3 since the accused person did not pay the money, marked as Exhibit-10.

- vi. PW-3 in his cross examination stated that at the time of agreement in the year 1993, the accused person issued certain post dated cheques in favour of PW-3. He also stated that the complainant was previously an Arm Group Enterprises Ltd. He mentioned that the

complainant did not give any money directly to the accused Company. PW-3 mentioned that the witnesses had claimed that he had paid money to the supplier who supplied machinery and equipment to the accused persons as per said lease agreement. The said machinery and equipment were hypothecated to the complainant company, till realization of the entire money as per lease agreement. He could not verify whether the accused person deposited any security money with the complainant. He also could not verify the value of the said machinery and equipment. He could not verify the amount of money paid by the accused persons as per that agreement. He mentioned the fact there was one Civil Suit pending before the Hon'ble High Court regarding recovery of the dues and not for ownership of those machinery and equipment. The agreement mentioned was a Lease Agreement. PW-3 stated a fact that the accused persons met with the superior officers of the complainant for amicable settlement, which was corroborated by DW-1.

- vii. DW-1 in his deposition stated that he was a partner of M/S Zindal Steel Products, a firm engaged in manufacturing steel poles of structures. The complainant supplied machineries to them worth Rs. 18 lakhs. DW-1 had paid the entire amount for the said machineries. The complainant company was the owner of the said machineries. The complainant company had filed another case

before the Hon'ble Court for taking possession of the said machineries, which corroborated by PW-3.

viii. DW-1 in his cross examination stated that the cheques were issued as hire-purchase to the complainant company. He also stated that the hire-purchase agreement was not operative. He stated that he had paid the price and the complainant had taken possession of the machineries. DW-1 stated that this matter could not be settled as they still owe some money to the complainant.

14. In ***Darshan Singh vs. State of West Bengal & Ors.***¹, the Hon'ble Supreme Court observed as follows:

“7. While constituting of an offence under Section 138 of the Act five acts must be proved.

- 1. Drawing of the cheque;*
- 2. Presentation of the cheque to the bank;*
- 3. Returning of the cheque unpaid by the drawee bank;*
- 4. Giving of notice in writing to the drawer of the cheque demanding payment of the cheque amount;*
- 5. Failure of the drawer to make payment within 15 days of the receipt of the cheque.*

*8. In Section 142 of the Act is has however, provided that such complaint is made within one month of the date on which the cause of action under clause 'C' of the proviso to Section 138. In clause 'C' of the proviso to Section 138 it is stated that if a drawer of cheque in question fails to make payment of the said amount to the payee or as the case may be, to the holder in due course of a cheque within 15 days of the receipt of the said notice, the complaint has to be lodged within 30 days there from. Identical question came up for consideration before the Hon'ble Supreme Court in the case of *Sil Import, USA v. Exim Aides Silk Products Silk Exporters, Bangalore.**

¹ 2000 SCC OnLine Cal 171

The said case had arisen from the judgment and order passed by the Karnataka High Court. The High Court was of course of the view that the case should be filed within 45 days from the date of receipt of the acknowledgement which the Hon'ble Supreme Court has disagreed and mandated that the case has to be filed under Section 142 of the Act within 30 days of the date of receipt of the notice by the drawer.

“Para 19. *The High Court's view is that the sender of the notice must know the date when it was received by the sendee, for otherwise he would not be in a position to count the period in order to ascertain the date when cause of action has arisen. The fallacy of the above reasoning is that it erases the starting date of the period of 15 days envisaged in clause (c). As per the said clause the starting date is the date of 'the receipt of the said notice'. Once it starts, the offence is completed on the failure to pay the amount within 15 days therefrom. Cause of action would arise if the offence is committed.*

Para 20. *If a different interpretation is given the absolute interdict incorporated in Section 142 of the Act that no court shall take cognizance of any offence unless the complaint is made within one month of the date on which the cause of action arises, would become otiose.”*

9. *Once the cause of action has started running, it cannot remain suspended subsequently. Under clause 'C' to the proviso to Section 138 the cause of action will start running from the date of receipt of the notice but not from the date of receipt of the 'acknowledgement due card'. It is true in the above case the notice, was sent in two days, one by fax message, and the other by registered post with A/D. In that case the date of notice was taken from the date of receipt of the fax message and the limitation was accordingly*

allowed to run from the date of receipt of the fax message. The Karnataka High Court was under erroneous view that the limitation shall run from the date of receipt of the 'acknowledgement due care' by the complainant. The receipt of the 'acknowledgement due card' by the complainant is not material for the purpose of computation of limitation. Only the receipt of notice by the drawer is an important factor from which day the cause of action shall accrue and within 30 days therefrom the complaint has to be filed failing which it would be barred by limitation under Section 142 of the Act.

10. *Mr. Mukherjee the Learned Advocate appearing for the opposite party no. 2 has relied upon a judgment reported in 1993 Criminal Law Reporter (Calcutta) 236, in the case of Santa Priya Engineers (Pvt.) Ltd. v. Uday Sankar Das it is true that the Learned Singh Judge Mr. A.K. Dutta (as he then was) held that the cause of action shall accrue from the date of receipt of the 'acknowledgement due card' by the complainant but in view of the authoritative pronouncement of the Supreme Court it is bound to be held that the aforesaid judgment is no longer good law and impliedly overruled. In this case the complaint has not been filed within a month from the date of receipt of the notice i.e. on 18.1.1999. Accordingly the complaint seems to be prima facie barred by limitation under Section 142 of the Act. In the result the application is allowed and the criminal case no. C/221 of 1999 is hereby quashed."*

15. The Learned Trial Court in the impugned judgment had opined as follows:

"Point No. 5: The Case was filed on 22.11.96. Notices were effected to accused on 4.10.96. The cause of starts running from the date when accused refused to accept it i.e. on 4.10.96. Accused was liable to make payment within 19.10.96 and if the payment is not

made on or before 19.10.96 cause of action starts. The case has to be filed within 30 days i.e. within 19.11.96. As the case is filed beyond 19.11.96 the stipulated period, it is time barred & not maintainable. The case being not maintainable all the accused are held not guilty and all the accused are acquitted under Section 255(1) of Cr.P.C. They are set at liberty. Sureties are discharged from bond.”

16. In view of the decision of the Hon’ble Apex Court as stated above the Learned Trial Court had rightly acquitted the appellant, considering stipulated period of 30 days to have been exceeded in filing the complaint. As such this Court is not inclined to interfere within the impugned judgment.
17. In view of the above discussions, the criminal appeal is accordingly dismissed.
18. I record my appreciation for the able assistance rendered by Mr. Ramasish Mukherjee, Learned Advocate, as *Amicus Curiae* in disposing of the appeal.
19. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
20. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)