

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

APPLICATION FOR LEAVE TO APPEAL NO. 43 OF 2023

Kishore Dharamdas Ahuja

...Applicant

vs.

Chandru Ramchand Soneji and Anr.

...Respondents

Mr. G. T. Kanchanpurkar - Advocate for the Applicant

Adv. Shekhar Bhise a/w Adv. Sachin Vaishampayan and Adv. Vrushali Patil - Advocate for the Respondent No. 1

Mr. S. R. Agarkar – APP for the State

CORAM : S. M. MODAK, J.

DATE : 08th JUNE, 2023

P. C. :-

1. It is true that after hearing both the sides, this Court has already closed the matter. In case of Yogendra Pratap Singh Vs. Savitri Pandey and Another¹, the Hon'ble Supreme Court has answered two issues. First issue is certainly relevant for decision in this proceedings. It is held that

‘The complaint filed earlier to cause of action cannot be said complaint in the eyes of law’.

Second question pertains to filing of the fresh complaint by giving

1 (2014) 10 Supreme Court Cases 713

the benefit as per the proviso to Section 142 of the Negotiable Instruments Act. This issue answered in para no. 41. The conclusion can be summarized as follows:-

- (a) The payee can file a fresh complaint within one month for condonation of delay.
- (b) This direction was made applicable for all pending cases.
- (c) The same complaint cannot be represented but new complaint has to be filed.

2. Considering the observations 'that direction shall be applicable to all pending cases', I thought it fit to hear both the sides again. Accordingly, I have heard them.

3. According to learned Advocate Shri Bhise those directions cannot be made applicable to the present case because facts are different. In Yogendra Pratap Singh(supra), the complaint was filed after the amendment in Section 142 of the Negotiable Instruments Act came into force. Whereas, according to him, in the present case, the complaint was filed in the year 2001 prior to the amendment came into force. According to him, whether that amendment is

prospective or retrospective is decided by the Hon'ble Supreme Court in case of Anil Kumar Goel Vs. Kishan Chand Kaura² and affirmed in case of Subodh S. Salaskar Vs. Jayprakash M. Shah and Ors.³.

4. In the present case, the trial Court has convicted the Respondent. When he preferred an appeal, conviction was set aside and main point was filing the complaint at a premature stage that is to say earlier to expiry of 15 days of the statutory notice. On the basis of observations in case of Yogendra Pratap Singh(supra), the complaint was held as premature filing. I do not find any wrong in those factual findings. Because it is part of record and hence leave as prayed cannot be granted.

5. Learned Advocate Shri. Kanchanpurkar, on the basis of observations in case of Gajanand Burange Vs. Laxmi Chand Goyal⁴ sought liberty to file a fresh complaint. It is true that in said judgment the observations case of Yogendra Pratap Singh(supra) are considered. However, I do not think liberty can be granted because facts of that case are also different. Facts are narrated in para no. 7 of the said judgment. Complaint was filed after 2005 that is after

² 2007 DGLS (SC) 1407

³ 2008 (13) SCC 689

⁴ 2022 (8) Supreme 434

amendment came into force. The amendment is already held as prospective and the facts in the present case which constitutes cause of action have taken place earlier to the amendment came into force. It came into force on 06/02/2003. So I do not think even liberty to file a fresh complaint can be granted. Hence, the application is disposed of. Hence question of entertaining appeal does not arise. It is also disposed of.

[S. M. MODAK, J.]