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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4121 OF 2022

M/s. H.B. & Associates & Ors. … Petitioners
V/s.
State of Maharashtra & Anr. … Respondents

Mr. Uzair Kazi with Ankita Sharma i/b YMK Legal for the petitioners.

Ms. Karishni Khanna with Ms. Twinkle Gadhiya i/b Pritesh Burad Associates for respondent No.2.

Mr. Arfan Sait, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 18, 2023

P.C.:

1. Challenge in this petition is to the order of Revisional Court confirming order of issuance of process in a complaint under Section 138 of the Negotiable Instruments Act, 1881.

2. Principal submission of the petitioner is that the cheque in question had been presented on 15th October, 2013. The date of cheque was 15th July, 2013. As per proviso (a) of Section 138 of the Negotiable Instruments Act, 1881, the cheque needs to be presented to the drawee bank within three months from the date of cheque. Considering the aforesaid dates, according to the petitioner 15th October, 2013 would be beyond the limitation prescribed under proviso (a) to Section 138 of the Negotiable Instruments Act, 1881 as 15th July, 2013 needs to be included within the expression of three months.

3. Learned advocate for the complainant invited my attention to the Judgment of Apex Court in the case of **Rameshchandra Ambalal Joshi Vs. State of Gujarat and Anr,** reported in AIR (2014) SC 1554, wherein the Apex Court was considering the proviso (a) to Section 138 of the Negotiable Instruments Act, 1881 to interpret expression "six months from the date on which it is drawn". The Apex Court in paragraph No.21 and 26 of the said judgment held as under :-

> 21. Proviso (a) to Section 138 of the Act uses the expression "six months from the date on which it is drawn". Once the word 'from' is used for the purpose of commencement of time, in view of Section 9 of the General Clauses Act, the day on which the cheque is drawn has to be excluded.
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> 26. Drawing a conclusion from the abovementioned authorities, we are of the opinion that the sue 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 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 of prescribed.

4. Conspectus of the decision in the case of **Rameshchandra Joshi** (supra), is that the first date on which the cheque was withdrawn needs to be excluded and period of three months needs be reckoned from the next day i.e. from 15th July, 2013.

5. It is not in dispute that by notification issued by Reserve Bank of India, the period of six months has been reduced to three months with effect from 1st April, 2012. If period of three months as required under proviso (a) to Section 138 is reckoned from next day, the date of presentation with drawee bank being 15th October, 2013 would bring presentation of cheque within limitation. Therefore, in my opinion, there is no error in passing order of issuance of process. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)