2023:BHC-NAG:14505

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL WRIT PETITION NO. 444/2023

Vandana Narhari Meshram ..Petitioner/s

versus

Lankesh Prabhu Gedam ..Respondent/s

....

Mr.S.A.Thakkar, Advocate for Petitioner/s
Mr.S.G.Karmarkar, Advocate for Respondent

....

CORAM: ANIL L. PANSARE, J.
DATED : 5th October, 2023.

PC:

On 4th September, 20023 the following order was passed:-

" *Heard.*

The contention is that the cheque is dated 27.05.2020 and it was lastly presented for encashment on 31.08.2020, which is beyond the period of three months. Section 138(a) of the Negotiable Instruments Act, 1881 provides that the cheque is to be presented to the bank within a period of three months from the date on which it has been drawn. It is further the contention that the learned Magistrate has not considered this vital aspect while issuing process.

The respondent seeks adjournment to take instructions.

Stand over to 11.09.2023."

2. When asked, the learned counsel for the respondent instead of answering the question formulated in the order dated 4th September, 2023 submits that the petitioner has an alternate remedy. The counsel for the petitioner submits that the applicant has prayed for quashing of the complaint, amongst other reliefs and, therefore, the application is maintainable. I endorse these submissions.

3. As such, the question formulated in the order dated 4th September, 2023 is no more *res integra*, as held by the High Court of Delhi, in the case of *Ansh Chugh vs. Pradeep Gupta*, reported in *MANU/ DE/0315/2020*. The paragraph nos. 7, 8 and 9 of the said judgment read thus :

> *"7. Admittedly, the cheque was presented to the drawee bank after the period of expiry of its validity of three months, which is to be calculated from the date mentioned on the cheque. The clause (a) of proviso to Section 138 of N.I.Act stipulates that Section 138 shall not be applicable unless the cheque is presented to the bank within a period of six months (the period has been reduced from 6 months to 3 months vide the aforementioned RBI notification dated 04.11.2011) from the date on which it is drawn or within the period of its validity, whichever is earlier.,*
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> *8. In Shri Ishar alloys Steel ltd. vs. Jayaswals NECO Ltd. Reported as MANU/SC/0121/2001: (2001) 3 SCC 609, the Supreme Court held that non-presentation of the cheque to the drawee bank within the period specified in the section would absolve the person issuing the cheque of his criminal liability under Section 138 of the N.I.Act.*
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> *9. The Supreme Court in MSR Leathers v. S.Palaniappan & another reported as MANU/SC/0797/2012, it was held as under :-*
>
> *"14. Presentation of the cheque and dishonour thereof within the period of its validity or a period of six months is just one of three requirements that constitutes 'cause of action' within the meaning of Sections 138 and 142(b) of the Act, an expression that is more commonly used in civil law than in penal statutes…"*
>
> *xxx*
>
> *19. ……A careful reading of Sections 138 and 142, as noticed above, makes it abundantly clear that the cause of action to institute a complaint comprises the three different factual*

> *prerequisites for the institution of a complaint to which we have already referred in the earlier part of this order. None of these prerequisites is in itself sufficient to constitute a complete cause of action for an offence under Section 138. For instance if a cheque is not presented within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier, no cause of action would accrue to the holder of the cheque even when the remaining two requirements, namely service of a notice and failure of the drawer to make the payment of the cheque amount are established on facts…."*

4. In the present case, the cheque was dated 27th May 2020 which was presented for encashment on 31.08.2020 which is beyond the period of three months and that there will be no cause of action to file the complaint. The complaint is, therefore, quashed. The writ petition is disposed of in above terms.

[ANIL L. PANSARE, J.]

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