

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

Cri.Writ Petition No.3278 of 2018

1. Ketan F. Karani

Age 57 Years, Managing Director
of M/s. Tirupati Enterprises (India)
Limited, 14, Sagar Samruddhi,
Plot No.1,2,3 Takai, Post Sajgaon,
Tal.Khalapur, Maharashtra 410203.

2. M/s Tirupati Industries (India) Ltd.
14 Sagar Samruddhi, Plot No.1,2,3 Takai,
Post Sajgaon, Tal.Khalapur)
Maharashtra 410203

... Petitioners.

Versus

1. M/s Orbit Impex,
a registered partnership firm, having
its office at 7th floor, Mehta Mahal,
15th Mathew Road, Opera House,
Mumbai-400 004.

2. The State of Maharashtra
through the Public Prosecutor,
A.S. High Court, Mumbai 400 023.

... Respondents.

...

Mr Manish Bohra i/by Vivek Phadke for petitioners.

Mr Paras N. Vira for respondent No.1.

Mr Arfan Sait, APP for respondent No.2/State.

Coram : R. N. Laddha, J.

Date : 12 April 2024.

P.C. :

In the present writ petition, the petitioners (original accused) challenge the judgment and order passed on 25 June 2018 by the learned Additional Sessions Judge, Mumbai, in Criminal Revision Application No.806 of 2017. This order confirmed the order of issue process under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act'), by the learned Metropolitan Magistrate, 14th Court, Girgaon, Mumbai, in CC No.257/SS/2017 on 20 June 2017, against the petitioners.

2. Mr Manish Bohra, the learned Counsel for the petitioners, submits that the accused received a statutory notice on 6 January 2017, and the 15-day period elapsed on 21 January 2017. Subsequently, the 30-day period, as contemplated under Section 142(b) of the NI Act, lapsed on 21 February 2017. However, the complaint was filed on 22 February 2017, which is not tenable as it was filed after the stipulated time. According to the learned Counsel, the Magistrate lacked the jurisdiction to take cognizance under Section 138 of the NI Act without an application under Section 142(1)(b) to condone the delay in filing the complaint. Regrettably, the Magistrate failed to acknowledge

that the complaint was filed beyond the limitation period and incorrectly passed an order for process issuance without jurisdiction.

3. On the contrary, Mr Paras Vira, the learned Counsel for respondent No.1/complainant, submits that the accused were granted 15 days time to pay the cheque amount, which expired on 21 January 2017. The cause of action arose on the subsequent day, 22 January 2017, the starting date, which is required to be excluded for calculating a month's period. Therefore, the trial Court's decision to take cognizance on 22 February 2017 falls within the statutory one month timeframe.

4. According to Section 138(c) of the NI Act, the cause of action arises when the cheque drawer fails to make payment within 15 days of receiving notice. In the present case, the accused received the statutory notice on 6 January 2017, and had 15 days until 21 January 2017. Consequently, the cause of action for filing the complaint would arise from 22 January 2017. It is a settled position in law, as highlighted in a case of *Econ Antri Limited Vs. Rom Industries Ltd. & Anr.*¹, that when calculating one month prescribed under Section 142(b)

1 2013(5)Bom.C.R.481.

of the NI Act, the day on which the cause of action arose should be excluded. Therefore, 22 January 2017, is to be excluded when counting the one month period. As a result, the complaint filed on 22 February 2017, falls within the permissible timeframe.

5. In light of the above, the present petition stands dismissed.

[R. N. Laddha, J.]