* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 28th October, 2024**

\+ CRL.M.C. 8819/2023

ASHOK KUMAR SHARMA .....Petitioner

Through: Appearance not given.

versus

STATE OF NCT OF DELHI AND OTHRS .....Respondent

Through: Ms. Richa Dhawan, APP for the State.
Mr. Murari Lal Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter as the "Code") (now under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) has been filed on behalf of the petitioner seeking the following reliefs:

> *"(A) Quash the Impugned summoning order dated 24/12/2019 passed by Sh.Mayank Goel: Mm-03, North: Rohini Court: Delhi In Cc No. 3859/2019 Title As Pawan Kumar Vs Ashok Kumar Sharma and consequently dismissal of the complaint filed by the respondent no 2 under section 138 of Negotiable Instrument Act 1881.*
>
> *(B). ALSO QUASH THE REVISION ORDER DATED 13/04/2023, PASSED BY SHRI. SATISH KUMAR: ASJ:NORTH: DELHI*

(C) Summons / call the records of the above stated complaint, and/or Pass any order/further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the matter"

2. The brief facts of the case are that the petitioner took a loan amounting to Rs. 12,00,000/- without any interest from the respondent no. 2 for his business purposes, which was lent to the petitioner in three installments i.e., Rs. 5,00,000/- on 4th March, 2016, Rs. 2,00,000/- on 8th March, 2016 and Rs. 5,00,000/- on 18th March, 2016.

3. The petitioner had agreed to pay the aforesaid loan to the respondent no. 2 on or before 30th September, 2018. However, upon failure to pay the loan amount within the said period and after several requests from the respondent no. 2, in the third week of October, 2018, the petitioner issued a cheque bearing no. 306926 dated 7th March, 2019 of Rs. 12,00,000/- drawn on Punjab National Bank, Tri Nagar, Delhi and handed the same to the respondent no. 2.

4. Upon petitioner's instructions, the respondent no. 2 presented the aforesaid cheque at the Union Bank of India, Sector-16, Rohini, Delhi for encashment, however, the said cheque was returned as 'Funds Insufficient' with the memo dated 9th April, 2019. The same was intimated to the petitioner, to which he apologized and requested the respondent no. 2 to re-present the cheque for encashment in the last week of May. Accordingly, when the respondent no. 2 presented the same, the said cheque was again returned as 'Funds Insufficient' with a memo dated 24th May, 2019

(hereinafter as the "impugned memo").

5. Aggrieved by the same, the respondent no. 2 sent a legal notice/demand notice to the petitioner on 21st June, 2019 demanding repayment of the loan amount.

6. However, upon failure of the petitioner to repay the loan amount, the respondent no. 2 filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter as the "NI Act") with the learned Metropolitan Magistrate-03, North District, Rohini Courts, Delhi (hereinafter as the "MM") on 13th August, 2019. Based on the said complaint, the learned MM took cognizance of the matter and issued summons to the petitioner *vide* order dated 24th December, 2019 (hereinafter as the "summoning order").

7. Thereafter, the petitioner challenged the summoning order in the Criminal Revision Petition bearing no. 134/2022 before the Additional Sessions Judge-03, North District, Rohini Courts, Delhi (hereinafter as the "ASJ"), however, the said revision petition was dismissed *vide* order dated 13th April, 2023 (hereinafter as the "impugned revision order")

8. Aggrieved by the summoning as well as the impugned revision order, the petitioner has filed the instant petition seeking setting aside of the same.

9. Learned counsel on behalf of the petitioner submitted that the learned MM erred in passing the summoning order without any application of judicial mind, consideration of documents on record and position of law.

10. It is submitted that there was a delay in filing the complaint under Section 138 of the NI Act by respondent no. 2. Moreover, the respondent no.

2 failed to serve a copy of the application seeking condonation of delay to the petitioner.

11. It is submitted that the learned MM erroneously passed the summoning order without condoning the said delay in filing the complaint under Section 138 of the NI Act.

12. It is further submitted that the original copy of the legal notice is mandatory to be part of the judicial record, however, the learned MM failed to observe that the original copy of the legal notice was not filed as part of the judicial record and therefore, there exits patent illegality in the summoning order.

13. It is submitted that the said summoning order was challenged before the learned ASJ in the revision petition bearing no. 134/2022, however, the same was erroneously dismissed on the ground that the complaint was filed within the statutory period as prescribed in the NI Act.

14. It is submitted that the learned ASJ erred in not considering that the said delay and that the summoning order was passed without condoning the such delay.

15. In view of the foregoing submissions, it is prayed that the instant petition may be allowed.

16. *Per Contra*, the learned counsel appearing on behalf of the respondent no. 2 submitted that the learned MM has rightly passed the summoning order after being satisfied that sufficient causes were shown for issuing summons against the petitioner.

17. It is submitted that while passing the summoning order, the learned

MM is not required to condone the delay in filing the complaint as the same has been filed within the prescribed time as mentioned under Section 142(1)(b) of the NI Act, and therefore, there arises no such delay.

18. It is further submitted that the prescribed period of one month as per Section 142(1)(b) of the Act expired on the day the Court was on leave and hence, the complaint was filed on the next working day, thereby being well within the limitation period.

19. It is submitted that the learned MM has correctly issued the summons against the petitioner after being satisfied that the requirements under Sections 138 and 142 of the Act are fulfilled.

20. It is also submitted that in the impugned revision order passed by the learned ASJ, it was rightly observed that there is no illegality in the summoning order as the complaint was filed within the statutory period of time.

21. Therefore, in light of the above submissions, it is prayed that the instant petition may be dismissed.

22. Heard learned counsel for the parties and perused the record.

23. The limited question for adjudication before this Court is whether the learned MM and learned ASJ erred in passing the summoning order and impugned revision order, respectively, against the petitioner.

24. At this juncture, it is pertinent to understand the scope of interference of this Court under Section 482 of the Code i.e., Section 528 of the BNSS, wherein this Court is bestowed with inherent jurisdiction to exercise its powers to either "prevent any abuse of process of law" or "secure the ends

of justice". However, the said terminologies are devoid of any specific definition due to its wide ambit and therefore, the determination as to whether the case falls within the scope of the aforesaid terms lies with the Court and must be testified based on the established principles of law. Moreover, under this provision, the Court must exercise its adverse powers sparingly, cautiously and in exigent cases.

25. Adverting to the merits of the case, it is the contention of the petitioner that the learned MM was wrong in taking cognizance of the case and issuing summons against the petitioner in the proceedings under Section 138 of the NI Act because – *firstly*, there was a delay of four days in filing the complaint under Section 138 of the NI Act; *secondly*, the delay of four days was not condoned while passing the summoning order; *thirdly*, the documents and material placed on record were not taken into consideration; and *lastly*, original legal demand notice was not placed on record.

26. Taking the foregoing into consideration, this Court will initially deal with the issue of limitation for filing the complaint under Section 138 of the Act and therefore, it is pertinent to understand the legal requirements of the NI Act as well as the series of events pertaining to the initiation of proceedings and summons against the petitioner.

27. Section 138 of the NI Act deals with the dishonor of the cheque for insufficiency of funds in the account and lays down certain criteria to be satisfied in order to make out a case under this provision. While dealing with the applicability and objective of this provision, the Hon'ble Supreme Court in the case of ***Kusum Ignots & Alloys Ltd v Pennar Peterson Securities***

***Ltd,* 2000 (SCC) Cri 546** categorically listed out the ingredients of Section 138 of the NI Act and the relevant paragraphs of the same are as follows –

> *"10. On a reading of the provisions of Section 138 of the NI Act it is clear that the ingredients which are to be satisfied for making out a case under the provision are:*
>
> *(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;*
> *(ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
> *(iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;*
> *(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;*
> *(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.*
>
> *11. If the aforementioned ingredients are satisfied then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section clarification is made that the phrase "debt or other liability" means a legally enforceable debt or other liability."*

28. As per the aforesaid extracts, it is observed that after a cheque is

returned for insufficient funds in the account, a notice demanding the repayment of the due amount should be issued by the payee to the drawer within a time period of thirty (30) days from the date on which the cheque was returned. Moreover, the provision also provides the drawer with a statutory period of fifteen (15) days to repay the due amount from the date of receipt of the demand notice. However, if the drawer fails to pay the due amount within the said statutory period, then an offence under Section 138 of the NI Act is deemed to have been committed.

29. Moreover, once the offence is made out under Section 138 of the Act, the concerned Magistrate shall take cognizance of the offence as per Section 142 of the NI Act, only if the complaint is made in writing, by payee or holder in due course of time and within one month from the date on which the cause of action arises.

30. In light of the same, it is pertinent to unfold the series of events that took place between the respondent no. 2 and the petitioner, wherein the cheque presented by the respondent no. 2 was returned for insufficient funds *vide* the return memo dated 25th May, 2019. Thereafter, the respondent no. 2, adhering to the statutory requirement of 30 days mentioned under clause (b) of proviso to Section 138 of the NI Act, issued a legal demand notice to the petitioner for the payment of due amount on 21st June, 2019 and the same was received by the petitioner on 24th June, 2019 as per the postal tracking report on record. Therefore, as per clause (c) of the proviso to Section 138 of the NI Act, the petitioner was demanded to make the payment of the due amount within fifteen (15) days from the date of receipt of the demand

notice i.e., 9th July, 2019. However, as per the facts of the present case, the said payment was not made by the petitioner within the requisite statutory time.

31. At this juncture, it is pertinent to observe that Section 142 of the NI Act necessitates that the complaint must be made in writing, in the due course of the cheque and within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138 of the NI Act. Accordingly, in the present case, upon non-receipt of the loan amount, the respondent no. 2 filed the complaint in writing on 13th August, 2019 within due course of the cheque.

32. However, it is the contention of the petitioner that there was a delay of four days in filing the said complaint and hence, the summoning order passed by the learned MM is incorrect and the learned ASJ failed to appreciate the same.

33. At this juncture, a question arises as to how the limitation period for filing the complaint is calculated and when does the cause of action arose in the instant case.

34. In light of the same, it is pertinent to note that the Hon'ble Supreme Court in the case of ***M/s Saketh India Limited & Ors. vs M/s. India Securities Limited,* (1999) 3 SCC 1** observed that the day on which the cause of action arises must be excluded in computing the limitation period for filing of the complaint as per Section 142(1)(b) of the NI Act. The relevant portion of the same is hereunder –

"6. Similar contention was considered by this Court in the case

of Haru Das Gupta v. State of W.B. [(1972) 1 SCC 639 : 1972 SCC (Cri) 368] wherein it was held that the rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded; the effect of defining the period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. In the context of that case, the Court held that in computing the period of three months from the date of detention, which was 5-2-1971, before the expiration of which the order or decision for confirming the detention order and continuing the detention thereunder had to be made, the date of the commencement of detention, namely, February 5th has to be excluded; so done, the order of confirmation dated 5-5-1971 was made before the expiration of the period of three months from the date of detention. The Court held that there is no reason why the aforesaid rule of construction followed consistently and for so long should not be applied. For the aforesaid principle, the Court referred to the principle followed in English courts. The relevant discussion is hereunder: (SCC p. 641, para 5)

"5. These decisions show that courts have drawn a distinction between a term created within which an act may be done and a time limited for the doing of an act. The rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded. (See Goldsmiths' Co. v. West Metropolitan Rly. Co. [(1904) 1 KB 1, 5 : 72 LJKB 931 : 89 LT 428] , KB at p. 5.) This rule was followed in Cartwright v. MacCormack [(1963) 1 All ER 11, 13 : (1963) 1 WLR 18] : All ER at p. 13, where the expression 'fifteen days from the date of commencement of the policy' in a cover note issued by an insurance company was construed as excluding the first date and the cover note to commence at midnight of that day, and also in Marren v. Dawson Bentley & Co. Ltd. [(1961) 2 QB 135 : (1961) 2 All ER

270] , a case for compensation for injuries received in the course of employment, where for purposes of computing the period of limitation the date of the accident, being the date of the cause of action, was excluded. (See also Stewart v. Chapman [(1951) 2 KB 792 : (1951) 2 All ER 613] and North, Re, ex p Hasluck [(1895) 2 QB 264 : 64 LJQB 694] .) Thus, as a general rule the effect of defining a period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. [See Halsbury's Laws of England, (3rd Edn.), Vol. 37, pp. 92 and 95.] There is no reason why the aforesaid rule of construction followed consistently and for so long should not also be applied here."

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8. *Hence, there is no reason for not adopting the rule enunciated in the aforesaid case which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act. Ordinarily in computing the time, the rule observed is to exclude the first day and to include the last. Applying the said rule, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer expires. The period of 15 days in the present case expired on 14-10-1995. So cause of action for filing complaint would arise from 15-10-1995. That day (15th October) is to be excluded for counting the period of one month. Complaint is filed on 15-11-1995. The result would be that the complaint filed on 15th November is within time."*

35. Therefore, placing reliance on the aforesaid case-law, in the matter at hand, the period of fifteen (15) days for repayment of the due amount expires on 9th July, 2019. Therefore, the cause of action under clause (c) of proviso to Section 138 of the NI Act arises on 10th July, 2019, which is to be excluded while calculating the limitation period of one month as envisaged

under Section 142(1)(b) of the NI Act. Therefore, according to the said provision, the complaint is to be filed on or before 10th August, 2019. However, the respondent no. 2 filed the complaint on 13th August, 2019.

36. It is the case of the respondent no. 2 that the limitation period of one month for filing the complaint expires on 10th August, 2019, on which the Court was not functioning and therefore, the respondent no. 2 was only able to file the complaint on the next working day i.e., 13th August, 2019.

37. Therefore, upon perusal of the Delhi High Court Calendar for the year 2019, which is on record, it is observed that the Court was closed on 10th August, 2019 (second Saturday), 11th August, 2019 (Sunday) and 12th August, 2019 (Idu'l Zuha - holiday) and the next working day was on 13th August, 2019. Therefore, as per Section 4 of the Limitation Act, 1963, when the prescribed period expires on the day when the Courts are closed, the said application may be filed on the next working day.

38. It is a known principle of law that a special law overrides the general law and accordingly, the provisions of the NI Act, which is a special enactment, takes over the provisions of the Limitation Act, 1963, which is a general enactment. However, when the special law is silent regarding a particular aspect, which is specifically dealt with by the general law, then the provisions of the general legislation are made applicable. The said principle is encapsulated by the Hon'ble Supreme Court in the case of ***Mirza Iqbal Hussain v. State of U.P.*, (1982) 3 SCC 516 : 1983 SCC (Cri) 111**.

39. In view of the same, the NI Act, which categorically lays down extensive substance regarding the dishonor of the cheque, is silent with

respect to the expiration of the limitation period on the day the Courts are closed. However, since the same is explicitly dealt by Section 4 of the Limitation Act, 1963, the same would be applicable in the instant case as well.

40. Therefore, given that the limitation period of one month for filing the complaint expires on 10th August, 2019, which is a holiday for the Court concerned, the same may be filed on the day when the Court concerned reopened i.e., 13th August, 2019.

41. It is also pertinent to note that the while passing the impugned revision order, the learned ASJ observed that since the statutory period of one month is expiring on a Court's holiday, the complaint filed on the next working day of the Court cannot be treated as beyond the limitation period. Based on the said reasoning, the learned ASJ did not find any illegality in the summoning order passed by the learned MM.

42. Hence, this Court is of the considered view that the respondent no. 2 filed the complaint well within the prescribed period of one month from the date on which the cause of action arose under clause (c) of proviso to Section 138 of the NI Act and the same has been rightly appreciated by the learned MM as well as the learned ASJ.

43. It has also been contended by the petitioner that the learned MM erred in not condoning the delay of four days in filing the complaint while passing the summoning order without sufficient reasons and original legal demand notice on record.

44. However, since the complaint under Section 138 of the NI Act is filed

within the prescribed period of one month as per Section 142(1)(b) of the NI Act, the learned MM is not required to go into the question of limitation for filing the complaint. Moreover, the original legal demand notice was also filed along with the complaint, as per the Lower Court Record, and therefore, the contention with respect to the same cannot be taken into account.

45. Coming to the issue of non-providence of sufficient reasons for summoning of the petitioner, it is observed that the respondent no. 2 filed pre-summoning evidence by way of an affidavit. It is pertinent to note that as per Section 145 of the Act, the complainant may give its evidence *via* an affidavit and upon satisfaction of the Court concerned, the same may be treated as an evidence for summoning the accused for any enquiry, trial or proceedings.

46. Upon perusal of the summoning order, it is observed that the learned MM was satisfied with the sufficient causes being shown and accordingly, summons against the petitioner were issued. Therefore, the learned MM was correct in passing the summoning order against the petitioner and the learned ASJ was also right in upholding the said summoning order.

47. In view of the aforesaid discussions, this Court is of the view that the learned MM and the learned ASJ have not committed any error or illegality while passing the respective orders and therefore, this Court does not find any reasons to exercise its powers under Section 482 of the Code as the instant petition is bereft of any merits.

48. Accordingly, the instant petition is dismissed along with the pending

applications, if any.

49. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 28, 2024
Rk/mk/ryp

Click here to check corrigendum, if any