



Crl.A.No.548 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.548 of 2014

Arumugham

... Appellant/Complainant

vs.

T.Sukumaran

... Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of Code of Criminal Procedure, against the acquittal made in C.C.No.164/2011 on the file of the learned District Munsif (conferment of Criminal Jurisdiction), Ranipet on 04.07.2014.

For Appellant : Mr.N.P.Kumar

JUDGMENT

The instant appeal challenges the Judgment of acquittal.

2. It is the case of the appellant that towards discharge of his liability, the respondent issued a cheque for a sum of Rs.50,000/- on 26.03.2007 in favour of the appellant; that when the appellant presented the cheque for collection, the same was returned with an endorsement 'Insufficient Funds'; a statutory notice was issued by the appellant on 25.04.2007; that in spite of receipt of the statutory notice, the respondent did not make any payment;



Crl.A.No.548 of 2014

and thus the respondent committed the offence under Section 138 of the Negotiable Instruments Act.

3. Before the trial Court, the appellant examined himself as PW1 and two other witnesses as PW2 and PW3 and marked Ex.P1 to Ex.P4. The respondent neither examined any witness nor marked any document.

4. The trial Court on consideration of the evidence on record , acquitted the respondent on the ground that the complaint filed by the appellant was premature and was filed before the cause of action arose for maintaining the complaint.

5. Mr.N.P.Kumar, learned counsel for the appellant submitted that though the legal position is well settled that the complaint cannot be filed within 15 days from the date of receipt of the notice by the accused, the learned Magistrate ought to have seen that the complaint was taken on file after the cause of action arose and having allowed the appellant to examine the witnesses ought to have decided the case on merits and prayed for



Crl.A.No.548 of 2014

setting aside the Judgment.

WEB COPY

6. Notice sent to the respondent has been returned unserved.

7. It is well settled that the cause of action for maintaining the complaint under Section 138 of the Negotiable Instruments Act, would arise only if the accused fails to make payment within 15 days from the date of notice issued under Section 138 (b) of the Negotiable Instruments Act. In fact in *Yogendra Pratap Singh Vs. Savitri Pandey & Anr.* reported in **(2014) 10 SCC 713**, the Hon'ble Supreme Court held as follows:

“39. Rather, the view taken by this Court in Sarav Investment & Financial Consultancy wherein this Court held that service of notice in terms of Section 138 proviso (b) of the NI Act was a part of the cause of action for lodging the complaint and communication to the accused about the fact of dishonouring of the cheque and calling upon to pay the amount within 15 days was imperative in character, commends itself to us. As noticed by us earlier, no complaint can be maintained against the drawer of the cheque before the expiry of 15 days from the date of receipt of notice because the drawer/accused cannot be said to have committed any offence



WEB COPY



Crl.A.No.548 of 2014

until then. We approve the decision of this Court in Sarav Investment & Financial Consultancy and also the Judgments of the High Courts which have taken the view following this Judgment that the complaint under Section 138 of the NI Act filed before the expiry of 15 days of service of notice could not be treated as a complaint in the eye of law and criminal proceedings initiated on such complaint are liable to be quashed.”

8. Admittedly, in this case, the complaint was filed on 10.05.2007.

The statutory notice was not served to the respondent. The last intimation of the notice was delivered on 12.05.2007. Therefore, this Court finds no infirmity in the Judgment passed by the trial Court that the complaint was filed before the cause of action arose. The learned counsel submitted that in the very same Judgment referred above, the Hon'ble Apex Court had granted liberty to complainants in such cases to file a fresh complaint provided the complainant satisfies the Court that he had sufficient cause for not making the complaint within the prescribed period of one month.

9. The Cheque is dated 26.03.2007. In view of the long lapse of time



Crl.A.No.548 of 2014

and in the facts and circumstances, this Court is of the view, no useful purpose would be served by granting an opportunity to the complainant to file a fresh complaint at this stage.

10. Accordingly, the Judgment of acquittal dated 04.07.2014 passed by the learned learned District Munsif, Ranipet in C.C.No.164 of 2011, is confirmed. This Criminal Appeal stands dismissed.

22.07.2025

Index : yes/no
Speaking /Non-speaking order
Neutral citation : yes/no
vum

To

1. The learned District Munsif
(conferment of Criminal Jurisdiction),
Ranipet.
2. The Section Officer,
Criminal Section,
Madras High Court,
Chennai.



WEB COPY



Crl.A.No.548 of 2014

SUNDER MOHAN, J.

vum

Crl.A.No.548 of 2014

22.07.2025