



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 93 OF 2026

**ANAND RAJENDRAKUMAR JAIN
VERSUS
KAVITA SANTOSH PATIL.**

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Mr. Dipesh D. Pande, Advocate for petitioner.

**CORAM : MEHROZ K. PATHAN, J.
DATE : 21st JANUARY, 2026.**

P.C. :-

1. The petitioner has approached this Court by filing the present writ petition, thereby challenging the order dated 20.12.2025 passed by the Judicial Magistrate First Class, Muktainagar, Dist. Jalgaon, whereby the application filed by the petitioner/accused for dismissal of complaint below Exh.47 came to be rejected by a speaking order.

2. The basic contention of the petitioner is that there was a delay in filing of the complaint and as such, the complaint ought not to have been entertained without there being an application for condonation of delay filed by the complainant. The petitioner submits that the cheque allegedly issued by the petitioner came to be dishonoured on 21.10.2022. The notice of demand was issued by the complainant on 7.11.2022. The said notice came to be served upon the petitioner/accused on 19.11.2022. The fifteen days statutory period expired on 3.12.2022. From there, within 30 days, the complaint ought to have been filed i.e. on or before 2.1.2023. However, the complaint came to be filed by the complainant on 12.1.2023. Thus, there was ten day's delay in filing the complaint and as such, the complainant ought to have filed an application for condonation of delay alongwith the complaint. In absence of any such application for condonation of delay,

the complaint ought not to have been entertained and as such, the same should have been dismissed.

3. It is further submitted by the learned counsel for the petitioner that the said application for dismissal of complaint on the ground of delay came to be rejected without any cogent reasons and as such, this Court may quash and set aside the impugned order dated 20.12.2025, thereby dismissing the complaint filed by the complainant and allowing the application for dismissal of complaint filed by the applicant.

4. I have gone through the order dated 20.12.2025 passed by the learned Judicial Magistrate First Class, Muktainagar, Dist. Jalgaon on the application below Exh.47 filed by the petitioner/accused bearing Misc. Complaint Case No. 12 of 2023. I have gone through the complaint dated 12.1.2023 filed by the complainant Kavita Santosh Patil against the petitioner Anand Rajendrakumar Jain. Perusal of the Miscellaneous Complaint No. 12 of 2023 filed by the complainant Kavita shows that there are sufficient reasons given by the complainant about the date of knowledge of the service of demand notice upon the petitioner/accused. It is stated in paragraph No. 4 of the complaint that the Cheque No. 893314 for Rs. 7,35,975/- was deposited on 7.10.2022 with the Maharashtra Gramin Bank, Branch at Muktainagar, however, the said cheque came to be dishonoured. The notice is issued by the complainant to the petitioner/accused on 7.11.2022 through RPAD. However, the acknowledgment was not received to the complainant and as such, the complainant had issued notice through her lawyer to the Post Office, Muktainagar. The Post Office Muktainagar has submitted the article tracking detail document with their signature on 12.12.2022. Thus, the knowledge of receipt of notice to the petitioner/accused was acquired by the complainant on 12.12.2022. The tracking details informed that the

petitioner was served with the notice on 19.11.2022. The fifteen day's statutory period to reply and comply the demand notice expired on 2.1.2023. However, as the complainant got knowledge of service of notice on 12.12.2022, in my view the thirty day's limitation for filing of complaint would expire on 12.1.2023. The complaint came to be filed on 12.1.2023 and as such, the complaint is within limitation.

5. The learned counsel for the petitioner relied upon the judgment of the Honourable Supreme Court in the case of ***S. Nagesh vs. Shobha s. Aradhya in SLP (cri.) No., 18127 of 2024*** , wherein, the Honourable Supreme Court has observed as under :-

“It is manifest from the clear and unambiguous language of the above proviso that the power conferred upon the Court to take cognizance of a belated complaint is subject to the complainant first satisfying the Court that he had sufficient cause for not making the complaint within time. The satisfaction in that regard, resulting in condonation of the delay, must therefore precede the act of taking cognizance. Ordinarily, a proceeding instituted with limitation-linked delay before a Court of law does not actually figure as a regular matter on its file until that delay is condoned. For example, Order XLI Rules 3A and 5(3) of the Code of Civil Procedure, 1908, make this position amply clear in the context of belated presentation of civil appeals. Therefore, the approach of the High Court in treating this crucial aspect as a mere interchangeable exercise, i.e. either to first condone the delay or to first take cognizance, is not in keeping with the mandate of the afore-stated proviso. We may note that the respondent was herself responsible for the imbroglio as she had made a categorical statement in her complaint that it was filed within time, when it was not.”

6. Perusal of clause (C) of Section 138 of the Negotiable Instruments Act, 1881 would show that the relevant date for accrual of cause of action for filing the complaint is the date of receipt of notice by the drawer. Thus, the knowledge of the complainant about the receipt of notice by the accused is therefore material as regards the accrual of

cause of action for filing the complaint. In the present case, the said knowledge was acquired by the complainant only on 12.12.2022. As such, the cause of action for filing the complaint within a period of 30 days would thus start running from 12.12.2022. Provision of Section 142(b) enables the court to take cognizance of a written complaint for an offence under Section 138 of the N.I. Act if it is made within one month from the date on which the cause of action, under clause (c) of the proviso to Section 138 on failure of the accused to make payment within a period of 15 days from the date of receipt of such notice accrues. The period of one month for filing the complaint under Section 142(b) is, therefore, to be reckoned accordingly as Sections 138 and 142 postulates only one cause of action for dishonour of one cheque. Thus, in my opinion, the date of receipt of said notice as provided under Section 138 of the N.I. Act shall be considered in the present case as the date of knowledge of receipt of said notice by the accused for calculating the one month's limitation period for filing the complaint. Any other interpretation of such provisions of law would frustrate the very object sought to be achieved by the N.I. Act.

7. The learned Single Judge of the Calcutta High Court, in the matter of *Santa Priya Engineers (Pvt.) Ltd. And another vs. Uday Shankar Das and another, reported in (1993)06 CAL CK 0023*, was pleased to observe as under :-

“5. As already indicated, on the relevant cheque being dishonoured twice, the complainant had sent notices by registered post with acknowledgment due to accused Nos. 2 and 3 through his advocate by letters dated December 28, 1990, demanding payment of the said amount of money. Accused No. 1 had received the aforesaid notice on January 1, 1991, and accused No. 3 had received the notice sent to him on January 3, 1991. In terms of Clause (c) of Section 138 of the Act, the cause of action (for the complaint) should be deemed to have arisen on January 18, 1991. The complaint was to be filed within one month from January 18, 1991, under Section 142(b) of the Act,

i.e., by February 18, 1991. But the relevant complaint had been filed by the complainant before the court on February 27, 1991, a little beyond one month from the date on which the cause of action for the relevant complaint apparently arose. The relevant complaint was prima facie time barred as such. But the question which crops up for consideration in the instant proceedings is whether the relevant complaint would indeed be time barred, in the special and peculiar undisputed facts and circumstances of the instant case, as indicated above. No decision on the point calling for consideration could be cited by the learned advocates for any of the parties.

6. Under the provisions of Clause (c) of Section 138 of the Act, the cause of action for such-like complaint arises on the failure of the drawer "to make payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within 15 days of the receipt of the said notice" given under Clause (b) thereof, and not before that. No such complaint can, therefore, legally be filed before the aforesaid period. That being so, the material and relevant date for accrual of cause of action for such-like complaint is the date of receipt of notice by the drawer. The complainant being the sender of the notice cannot clearly receive the same. The recipient of the notice under Clause (b) of Section 138 of the Act must invariably be the drawer of the cheque, to whom it is given. Knowledge of the sender about the date of receipt of the notice by the drawer is, therefore, very much material as regards accrual of the cause of action for making such-like complaint. The sender of the notice could clearly have no personal knowledge about the date of receipt of the same, unless the notice is sent by messenger and the receipt thereof is duly acknowledged by the person to whom it is sent. But in cases (as in the instant case), where notice is sent by registered post acknowledgment due, which is the usual mode of service, which could, in particular, hardly be avoided if the parties do not belong to the same place or near about places, the knowledge of the sender (complainant) about the date of receipt of such notice would invariably be dependent upon other agencies, namely, the postal department, which is obliged to return back the acknowledgment due card to the sender of the registered notice. But the promptitude and efficiency of the postal department is a matter which is an everyday experience for the people at large. More often than not, acknowledgment due card is hardly returned back to the sender (of the registered notice) in time. Not infrequently, the acknowledgment due card never reaches back the sender, necessitating correspondence with the postal department as to the delivery/service of the registered notice or the date of delivery/ service of such notice. Not unoften, the somnolence of the postal authority could hardly be shaken within reasonable time in answering such query when the acknowledgment due card does not reach back the sender. In

*such cases, such-like complaint is likely to fail for no fault of the complainant, but for the failure/laches on the part of the postal department. The purpose of the Act is, therefore, likely to be frustrated, in such circumstances, which could never possibly have been intended by the makers thereof. The question which thus naturally arises for consideration is whether the literal and mechanical way of construing Clause (c) of Section 138 of the relevant Act would be justified in law, in such circumstances. The knowledge of the sender of the notice about the date of receipt of the same being an essential requirement of fair-play and natural justice, the expression "within 15 days of the receipt of the said notice", used in the aforesaid provision, should clearly mean the date when the sender acquires the knowledge about the date of the receipt of the notice given by him under Clause (b) of the relevant provision. If a person is given a right to resort to a remedy within a prescribed time, limitation should not be computed from a date earlier than that on which the party aggrieved actually knew about the date of accrual of the cause of action for making a complaint before the competent court for seeking redress therefore, or else, it might be an absurd and unreasonable application of law. On the analogy of the decision of the Supreme Court in **K. P. Varghese v. ITO** MANU/SC/0300/1981 : [1981]131ITR597(SC) , we must, therefore, eschew literalness in the interpretation of Clause (c) of Section 138 of the Act and "try to arrive at an interpretation which avoids such absurdity and mischief and makes the provision rational and sensible, unless of course, our hands are tied and we cannot find any escape from the tyranny of literal interpretation." It is now a well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result, which could never have been intended by the Legislature, the court may modify the language used by the Legislature, or even "do some violence" to it, so as to achieve the obvious intention of the Legislature and produce a rational construction (vide *Luke v. Inland Revenue Commissioners* [1963] AC 557 ; [1964] 54 ITR 692 (HL)). The court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision. It, therefore, seems to me that having regard to this well recognized rule of interpretation, a fair and reasonable construction of Clause (c) of Section 138 of the Act should be read into it so that the expression therein "within 15 days of the receipt of the said notice" should be made to mean within 15 days from the date of knowledge of the sender about the receipt of the notice so that suchlike complaint may not fail for default on the part of the postal department, without any fault on the part of the complainant. On such construction, the cause of action for such complaint, so far as the complainant is concerned, would accrue on the failure of the drawer to make payment within fifteen days from the date of knowledge of the*

complainant about the receipt of the notice by the former (drawer), which would neither be prejudicial to him (drawer/accused), rather beneficial to him as he would get longer time to make payment of the amount and thus avoid criminal liability for non-payment. It would indeed be in the interest of such-like complainant to file complaint for such offences within the prescribed period so that the same may not be turned down for having been filed beyond the prescribed period resulting in failure of the remedy available to him under the law on such technical ground. Such-like complainant would invariably be interested in seeing that the court takes cognizance of the offence and issues process because that would be the culmination of the petition of complaint filed by him on the allegations made and could hardly allow his petition of complaint to be time barred to his own prejudice. At the same time, however, the complainant should exhibit due diligence and promptitude in securing knowledge within a reasonable period about the date of receipt of the notice, sent by registered post acknowledgment due, without sleeping over the matter for an unreasonable period, in case of failure of the postal department to send back the acknowledgment due card and/or intimate the date of receipt of the notice by the addressee within a reasonable period.”

8. Perusal of the record shows that the application was filed by the complainant for grant of interim compensation. The petitioner herein has filed his say on 1.4.2025 on the application for interim compensation. However, the learned trial court vide its order dated 15.5.2025 has granted interim compensation to the extent of 25% of the cheque amount by virtue of Section 143-A of the Negotiable Instruments Act. After passing of the order, dated 15.5.2025 granting interim compensation. The applicant has filed the present application for dismissal of the complaint below Exh.47 which came to be rejected by the trial court vide order dated 20.12.2025. The learned trial court has observed in detail that the complainant has filed the application alongwith relevant documents to show that he has received the information from the post office only on 12.12.2022 about the accused/applicant being served with the notice of demand on 19.11.2022 and as such, the complainant was filed within limitation and found that the application for dismissal of complaint was not tenable and hence, rejected the application. The

application filed by the applicant appears to be filed by him only with an intention to protract the trial of the complaint.

9. Thus, taking into consideration the above mentioned facts and the provisions of the N.I. Act, as discussed hereinbefore, as well as the judgments on the said issue, I am not inclined to entertain the present writ petition.

True it is that the Court has to take cognizance of a belated complaint subject to complainant first satisfying the court that he had sufficient cause for not making the complaint within time. However, considering the specific ground mentioned in the complaint and the postal tracking report produced on record, substantiating the fact that the complainant got knowledge about the receipt of demand notice on 12.12.2022, the learned Judicial Magistrate did not commit any error in taking cognizance of the complaint. The application for dismissal of complaint was also decided after taking into consideration the entire documents filed on record by the complainant. After going through the complaint, the documents annexed thereto and also the objection filed by the petitioner, the learned trial court has rightly held that the objection about delay has no substance and rejected the application for dismissal of the complaint. As such, I do not see any error in the impugned order dated 20.12.2025 passed by the learned Judicial Magistrate First Class, Muktainagar. The petition is, therefore, devoid of substance and merit and same is hereby dismissed.

[MEHROZ K. PATHAN]
JUDGE.

Grt/-