

HIGH COURT OF JUDICATURE AT ALLAHABAD

(Sl.No. 18)

Court No. - 79

Case :- APPLICATION U/S 482 No. - 20471 of 2024

Applicant :- Dinesh Kumar

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Man Mohan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Man Mohan Singh, learned counsel for the applicant and Sri Rajeev Kumar Singh, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the entire criminal proceedings of Complaint Case No. 1397 of 2021 (Rajveer Singh vs. Dinesh Kumar) under Section 138 of Negotiable Instruments Act, 1881, Police Station-Jaithra, District-Etah as well as order dated 16.08.2022.

3. Learned counsel for the applicant relying upon the judgement of the Coordinate Bench of this Court in the case of ***Mamta Gautam vs. State of U.P.*** passed in ***Criminal Revision No. 530 of 1998*** dated 2.5.2000 has vehemently submitted that the instant complaint case filed by the opposite party no. 2 is time barred as the legal demand notice was sent on 18.2.2021 which was served on 19.2.2021 on the applicant, therefore the complaint ought to have been filed within one month from the date of service of notice. However, in the instant case the complaint was filed on 2.4.2021 which is beyond the period of one month from the date of service of notice, therefore, learned counsel for the applicant seeks quashing of the entire proceedings of the instant case.

4. Per contra, learned A.G.A. submits that in terms of Section 142 (1)(b) of N.I. Act, the complainant has one month's time to file the complaint under Section 138 of N.I. Act from the date when the cause of action arises for filing such complaint and

the cause of action for filing the complaint would arise only after the expiry of 15 days period from the date of service of demand notice on the drawer of the cheque. In the instant case, demand notice was served on 19.02.2021, therefore, the cause of action for filing the complaint would arise after the expiry of 15 days period from 19.02.2021 i.e. 7.03.2021 and from 07.03.2021 the complainant had the time of one month to file the complaint and in the instant case the complaint has already been filed within the period of limitation i.e. on 02.04.2021. In view thereof, learned A.G.A. submits that no interference is called for in the instant matter.

5. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the record of the case.

6. From the record of the case, it is apparent that the cheque was allegedly issued by the applicant herein on 18.10.2020 and 20.10.2020. The aforesaid cheques were presented for encashment on 21.01.2021 which were dishonored on 22.01.2021 with the remark 'payment stopped by the drawer'. Thereafter, on 18.2.2021 legal demand notice was issued by the opposite party no.2 which was served on 19.2.2021 upon the applicant herein, thereupon the complaint was filed on 02.04.2021. To appreciate the submissions made by learned counsel for the applicant, it is relevant to take note of the provisions of Section 138 and 142(1)(b) of the Negotiable Instruments Act, 1881, which are reproduced herein as under:-

"138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that 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 that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years', or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the 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;

(b) the payee or the holder in due course of the cheque, as the case may be, 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 thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the 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 fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability.

142. Cognizance of offences.—(1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),*

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

(2) *The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—*

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."

7. From the plain reading of the aforesaid provisions, it is apparent that to constitute the offence under Section 138 of N.I. Act, the cheque must be presented for encashment within its validity period and after the receipt of intimation with regard to dishonor of the cheque, the holder of the cheque is required to issue demand notice within a period of 30 days from the date of intimation of dishonor of the cheque and after the legal demand notice is issued and served on the drawer of the cheque, the holder of the cheque is required to wait for a period of 15 days. When after expiry of 15 days, the demand notice is not complied with by the drawer of the cheque only then the cause of action of filing the complaint under Section 138 N.I. Act would arise. Thereafter, the complainant has a further period of one month in terms of Section 142(1)(b) for filing the complaint.

8. In view of the aforesaid observations, the observation made by Coordinate Bench of this Court in **Mamta Gautam (supra)** that "under Clause (b) of Section 142, Negotiable Instruments Act, the complaint can be filed within a period of one month, from the date of service of the notice" is in the considered opinion of this Court, *per incuriam* as language of Section 142(1)(b) is categorically clear which says that one month period for filing the complaint will start when the cause of action arises under clause (c) of the proviso to Section 138 of N.I. Act.

9. In view thereof, the instant application lacks merit and is accordingly, **dismissed**.

Order Date :- 28.8.2024

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(Anish Kumar Gupta, J.)