

Om Jhanwar Vs. Prabhakar

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Court : Madhya Pradesh

Decided On : Mar-13-2007

Reported in : III(2007)BC514

Judge : S.C. Vyas, J.

Appellant : Om Jhanwar

Respondent : Prabhakar

Disposition : Petition dismissed

Judgement :

ORDER

S.C. Vyas, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure preferred by petitioner complainant for quashment of the proceedings of private Criminal Case No. 964 of 2005 filed by respondent against the petitioner under Section 138 of Negotiable Instruments Act (hereinafter shall be referred to as the 'Act' for brevity) on the ground that complaint has been filed after the period of limitation prescribed under the provisions of Section 142(2) of the Act.

2. Short facts of the case necessary for deciding this petition are that petitioner obtained loan of Rs. one lac for a period of one month and an account payee

cheque bearing No. 97562 dated 26.4.2003 was issued in favour of respondent for repayment of the aforesaid loan amount. The cheque was presented in the Bank for payment which was dishonoured and returned by the Bank to the respondent on 23.10.2003 with an endorsement that sufficient funds are not available in the account of petitioner.

On 2.11.2003, respondent sent a demand notice to the petitioner which was received by him on 24.11.2003 acknowledging the same as Annexure P.5. Despite service of notice loan amount was not paid by the petitioner within prescribed period of 15 days. Then a private complaint under Section 138 of the Act was filed on 12.1.2004 before the learned Trial Magistrate.

3. Contention of the petitioner is that when demand notice was served on him on 24.11.2003, then, as per provisions of Section 142(b) of the Act, a criminal private complaint was required to be filed on or before 9.1.2004, but the same was filed on 12.1.2004 which is clearly beyond the period of prescribed limitation and, therefore, was not maintainable and deserves to be quashed.

4. I have heard the Counsel for parties and perused the certified copy of the private complaint filed by respondent against the petitioner.

5. Learned Counsel for petitioner submitted that as per provisions of Section 142(b) of the Act, the complaint was required to be filed within one month from the date on which the cause of action arises under Clause (c) of the proviso to Section 138 which provides that 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. Learned Counsel submitted that joint reading of Section 138 Proviso (c) and Section 142(b) of the Act clearly shows that cause of action for filing complaint accrues when the drawer fails to make payment within 15 days after receipt of notice under Clause (b) to proviso of Section 138 and thereafter within one month the complaint is required to be filed. The said complaint has not been filed within the aforesaid period of one month; the same would not be maintainable. To substantiate this contention, learned Counsel placed reliance on judgments reported in the matter of Agricultural Market Committee Adoni. v. Shri Sankar Rao

and Company, Adoni and Anr. III (2003) BC 382 : 2004 Cri.L.J. 1291; Poornasree Agencies v. Universal Enterprises I (1995) BC 669; and Muhammed Kunhi v. Janardhanan II (1999) BC 29 : 1999(1) Crimes 221, and argued that for the purpose of calculation of the period of one month, the expression month employed in the Act covers only British calendar month and not the lunar month.

6. On the contrary, learned Counsel for respondent contended that the question which has been raised by petitioner in this petition is a question of fact which can only be adjudicated after providing opportunity to both parties to lead their evidence. Such question cannot be determined in this petition.

7. I have given serious consideration to the arguments advanced by Counsel appearing for both the parties and considered the averments made in the complaint.

8. In the complaint itself it has been stated that a demand notice under Clause (e) to proviso of Section 138 was served on the petitioner on 24.11.2003 thereafter complainant was required to wait for next 15 days for payment of the amount of cheque. It has been averred in the complaint that till 9.12.2003, no amount was paid by petitioner to the complainant/respondent and 9.12.2003 has been shown as the date of cause of action. Therefore, from the averments of the complaint itself the cause of action accrued on 9.12.2003 and under the provisions of Section 142(b) of the Act, the complaint was required to be filed within one month from the date of on which the cause of action arises. In the complaint, nothing has been stated regarding delay in filing of the complaint and even, then, complaint was filed on 12.1.2004. In a separate application filed under Section 5 of the Limitation Act, it has been stated that complaint was to be filed on 10.1.2004, but 10th and 11th are holidays of the Court being Saturday and Sunday and the same was filed on 12.1.2004, therefore, the complaint is within limitation.

9. Leaned Counsel for petitioner vehemently argued that the period of one month should be calculated according to the definition given in Section 3(35) of the General Clauses Act. Section 3(35) of General Clauses Act provides that month shall mean a month reckoned according to the British Calendar. In the facts of present case, the month of December happened to be 31 days in all, therefore,

according to the calculation submitted by learned Counsel for respondent, the complaint was not barred by time, because the period of one month was completed on a date which happened to be holiday being Saturday. Whereas, according to the calculation of learned Counsel for petitioner, the period of one month commenced from 10.12.2003 had expired on 9.1.2004 which was the working day of the Court and therefore benefit of 10th and 11th January being holidays, cannot be given to the petitioner. The calculations provided by both parties are contradictory to each other and bringing this Court to a question of fact which is yet to be determined.

10. In the facts of present case, it appears that calculation of period of limitation can only be adjudicated after providing opportunity to both parties to lead their evidence documentary and orally. There appears to be dispute of one day only in calculation of both parties. This dispute can only be resolved after recording evidence and in view of the aforesaid situation, it does not appear to be a fit case wherein powers vested under Section 482 of Cr. P.C. can be exercised.

11. Resultantly the question of limitation is kept open and the petition stands dismissed with a direction to the Trial Court to determine the question of limitation after providing opportunity to both parties to lead their evidence orally and documentary both.