

**Thomas Vs. Benny Thomas**

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**Court :** Kerala

**Decided On :** Nov-24-2009

**Reported in :** 2010(1)KLT666

**Judge :** P.S. Gopinathan, J.

**Acts :** [Negotiable Instruments Act, 1881](#) - Sections 138 and 142; ;Code of Criminal Procedure (CrPC) - Section 203

**Appeal No. :** Crl.R.P. No. 2871 of 2009

**Appellant :** Thomas

**Respondent :** Benny Thomas

**Advocate for Def. :** Rithwik, Public Prosecutor

**Advocate for Pet/Ap. :** Mathew Philip Edappallil and; Deleep Raj, Advs.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**P.S. Gopinathan, J.**

1. The revision petitioner is the complainant in Crl.M.P. No. 901/2009 on the file of the Judicial First Class Magistrate-I, Ettumanoor. The revision petitioner filed the

above complaint before the Trial Court on 17.3.2009 against the first respondent herein alleging offence under Section 138 of the Negotiable Instruments Act. The learned Magistrate after perusing the allegations in the complaint arrived a conclusion that the cause of action for filing the complaint arose on 15.2.2009 and the complaint should have been filed on or before 15.3.2009. Since the complaint was filed on 17.3.2009 it is beyond the statutory period. Consequently the complaint was dismissed under Section 203 of the Code of Criminal Procedure.

2. Assailing the legality, correctness and propriety of the above order, this Revision Petition was preferred.

3. The Learned Counsel for the revision petitioner as well as the Public Prosecutor was heard. The crux of the case is that, in discharge of liability amounting to Rs. Two Lakhs owed by the first respondent to the revision petitioner a cheque dated 19.1.2009 drawn on Kanakkary Service Co-operative Bank was issued. When the cheque was presented for collection it was dishonoured for insufficient funds. Demanding discharge of the liability a lawyer notice was caused on 29.1.2009. The first respondent acknowledged the same on 31.1.2009. There is no discharge.

4. It is not in dispute that the cause of action for filing the complaint would arise after expiry of 15 days from the date of receipt of notice and the complaint should have been filed within one month thereafter. The learned Counsel stressed his argument that one month is to be calculated as Solar month and 30 days has to be counted. In support of the contention that 30 days is to be counted for one month, the learned Counsel had given reliance to the decision in *Kathayee Cotton Mills v. Gopala Pillai* 1979 KLT 721. It was further argued that one month is to be counted after the expiry date, 15 days from the date of receipt of the notice. In support of that argument the learned Counsel had given reliance to the decision reported in *Jossy Kondody v. Chacko Thomas* 1999(3) KLT 201 and the decision reported in *Krishnankutty Nair v. Ashokan* : 2005 (1) KLT 537. In support of his argument that the month prescribed in the proviso to Section 138 of the Negotiable Instruments Act would mean the British calendar month and not Lunar month, reliance was also placed on the ratio of the decision reported in *Muhammed Kunhi v. Janardhanan* 1998 (2) KLT 207.

5. In Kathayee Cotton Mills's case the issue was regarding the calculation of 15 days salary. The argument was that there were only 26 working days in a month and to calculate one day's salary, a month is to be calculated as 26 working days and to determine a day's salary, monthly salary has to be divided by 26 and to determine 15 days' salary, the daily salary is to be multiplied by 15. Rejecting the contention, this Court held that a month is to be counted as 30 days. In Muhammed Kunhi's case this Court has held that a month is to be calculated as a British calendar month and not as a Lunar month. Going through the facts of the case and the dictum laid down in Kathayee Cotton Mills's case and Muhammed Kunhi's case, I find that the ratio of the above decisions has no application in this case. The ratio of the decision in the other two cases are squarely applicable. But that may not enure to the benefit of the revision petitioner for the reason that we can't count thirty days in February. Neither can February be treated as a lunar month for the reason that the number of days in February corresponds to that of a lunar month. It is to be treated as a full solar month in a British Calendar year which is based on solar system.

6. Admittedly, the 15 days from the date of notice would expire by 15.2.2009. Applying the ratio of the decisions in Jossy Kondody's case and Krishnankutty Nair's case, the cause of action would arise from 16.2.2009. If a month is calculated from 16.2.2009, without counting the days in the month, it would expire by 15.3.2009. Relying upon the ratio of the decision in Saketh India Ltd. v. India Securities Ltd. 1999 (2) KLT 14 (C. No. 13) SC it was argued by the learned Counsel for the revision petitioner that the day on which cause of action arises, ordinarily has to be excluded. So, according to the learned Counsel for the revision petitioner, a period of 30 days has to be calculated from 17.2.2009 and the complaint being filed on 17.3.2009, it is within the period of 30 days and hence it is not beyond the statutory period.

7. I am unable to accept the above argument advanced by the learned Counsel for the revision petitioner. Since the words used in Section 142(b) of the Negotiable Instruments Act is 'within one month of the date on which cause of action arises', a month is to be calculated without adverting to the number of days in a month, whether it is 28, 29, 30 or 31, as the case may be. For example, if one month is

calculated from 17th of February it would expire by 16th of March. If one month is calculated from January 31st, it would expire by 28th February in non-leap year and in leap year it would expire by 29th. If we calculate one month from the first of February, then also, it would expire by 28th February in non-leap years or by 29th February in leap years. It doesn't matter that February has only 28 days or 29 days. Irrespective of the number of days it has got, February is also a month. For the purpose of calculation of limitation under Section 142(b) of the Negotiable Instruments Act, February is nothing shorter than a month. Such an interpretation would also fall in line with the literal or grammatical rule of interpretation, which postulates that the words of an enactment are to be given their ordinary and natural meaning; and if such meaning is clear and unambiguous, effect should be given to it, whatever be its consequences. If the language is plain, the court is bound to give effect to it; and has no business to look into the consequences of such interpretations. The court is to expound the law as it exists. If harsh conclusions result from such exposition, it is not for the court, but for the legislature to remedy it. Even if it is assumed that an alternative interpretation is possible, in criminal cases, one in favour of the accused should be adopted. Since the time limit prescribed under Section 142(b) of the Negotiable Instruments Act for filing the complaint is within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138, even if the date is calculated from 17.2.2009 it would expire by 16.3.2009. Admittedly, the complaint was filed only on 17.3.2009. It is beyond the period of one month prescribed under Section 142(b). Court below was right in finding that the complaint was filed beyond the prescribed period. I find no error, illegality or impropriety in the order impugned. The Revision Petition is devoid of any merit and accordingly it is dismissed.

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