

Rayis Ahmad Vs State of U.P. and Another

Court: Allahabad High Court

Date of Decision: Jan. 17, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 468, 482
Negotiable Instruments Act, 1881 (NI) â€” Section 138, 142, 142(b)

Citation: (2014) 1 ACR 401 : (2014) 1 ADJ 713 : (2014) 2 ALJ 166 : (2014) 87 ALLCC 115 : (2014) 2 BC 457

Hon'ble Judges: Aditya Nath Mittal, J

Bench: Single Bench

Advocate: Tripathi B.G. Bhai, Advocate for the Appellant; Shahroz Khan, Advocate for the Respondent

Judgement

Aditya Nath Mittal, J.

Heard learned counsel for the revisionist, learned counsel appearing for the opposite party No. 2 and perused the

record. This criminal revision has been filed against order dated 3.9.2013 passed by Sessions Judge, Siddharth Nagar in Criminal Revision No. 94

of 2013, by which the revision has been allowed and the matter has been remitted back for fresh decision.

2. Learned counsel for the revisionist has submitted that learned Sessions Judge has drawn a wrong conclusion that the complaint could not have

been filed without expiry of 15 days from the receipt of notice. It has also been submitted that in Negotiable Instruments Act, 1981, no such

limitation has been prescribed by the legislature.

3. Learned counsel for the opposite party No. 2 has defended the impugned order and has submitted that the order passed by learned Sessions

Judge is in accordance with law.

4. The proviso (c) of Section 138 of N.I. Act, provides as under:

138. Provides that nothing contained in the Section shall apply unless--

(a)

(b)

(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.

5. The basic question for consideration is whether the complaint can be filed prior to expiry of the said period of 15 days as provided in proviso

(c) to Section 138 read with Section 142(b) of N.I. Act or not.

6. Learned counsel for the revisionist has relied upon Narsingh Das Tapadia Vs. Goverdhan Das Partani and Another, , in which Hon"ble the

Apex Court has held as under:

The compliance of clause (c) of proviso to Section 138 enables the Court to entertain a complaint. Clause (b) of Section 142 prescribes a period

within which the complaint can be filed from the date of the cause of action arising under clause (c) of the proviso to Section 138, No period is

prescribed before which the complaint cannot be filed, and if filed not disclosing the cause of action in terms of clause (c) of the proviso to Section

138, the Court may not take cognizance till the time the cause of action arises to the complainant.

In the instant case mere presentation of the complaint on 8.11.1994 when it was returned to the complainant/appellant on the ground that the

verification was not signed by the counsel, could not be termed to be an action of the magistrate taking cognisance within the meaning of Section

142 of the Act. The High Court appears to have committed not only mistake of law but a mistake of fact as well. No cognisance was taken on

8.11.1994, but the Magistrate is shown to have applied his mind and taken cognisance only on 17.11.1994. The learned Judge of the High Court,

without reference to various provisions of the Act and the Code of Criminal procedure, wrongly held thus:

The date of filing i.e. 8.11.1994 in this case is crucial. The return of the complaint filed by the respondent to comply with some objections and

subsequent filing on 17.11.1994 in this case does not have any affect. Therefore, the complaint is pre-mature and is liable to be dismissed.

7. The aforesaid law laid down by Hon"ble the Apex Court do not apply to the present facts of case because Section 142(b) specifically provides

that complaint has 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 of

N.I. Act. Certainly, the cause of action shall arise after expiry of 15 days from the date of receipt of the said notice.

8. Learned counsel for the revisionist has further relied upon Smt. Deep Shikha Agarwal Vs. State of Uttarakhand and Rampal Singh, , in which

the Uttarakhand High Court has held that criminal complaint filed by respondent No. 2 after service of notice on the petitioner but before expiry of

15 days, cannot be quashed u/s 482 of Cr.P.C., particularly when the cognisance has been taken after expiry of 15 days of service of notice.

9. Learned counsel for the revisionist has further relied upon Sant Kumar Khara Vs. State of U.P. and Another, , in which this Court has held as

under:

If the complaint is found to be premature, it can await maturity or be returned to the complainant for filing later, and its mere presentation at an

earlier date need not necessarily render the complaint liable to be dismissed or confer any right upon the accused to absolve himself from the

criminal liability for the offence committed.

Therefore, if the complaint has been filed before the cause of action arises it cannot be rejected on the ground of prematurity.

10. Learned counsel for the revisionist has further relied upon *Vinay Patni Vs. State of U.P. and Another*, in which learned Hon"ble Single Judge

of this Court has held as under:

In view of the discussion made above, I am of the view that, at this stage, the summoning order cannot be faulted on the ground that the complaint

was premature, particularly, when the complaint was filed after 23 days of the date of issuance of notice. The decisions of this Court which have

been relied upon by the learned counsel for the revisionist are not applicable to the facts and circumstances of this case inasmuch as in those cases

there was material before the Court to come to a specific conclusion that cognisance was taken prior to expiry of 15 days from the date of service

of the demand notice.

11. Learned counsel for the revisionist has further relied upon *Smt. Hem Lata Gupta Vs. State of U.P. and Another*, in which Hon"ble Single

Judge of this Court has held as under:

In this way, the controversy in the case has been finally settled by the Apex Court that in case the complaint is filed prior to expiry of 15 days of

the notice, it cannot be said incompetent. The bar of expiry of 15 days is for taking cognisance. In the instant case, though complaint was filed on

26.6.1998 but cognisance was taken on 18.11.1998, which was much after 15 days from the date of notice i.e. 13.6.1998 and, therefore, no

cognisance was taken within 15 days of the date of notice. The learned Sessions Judge, therefore, wrongly allowed the revision. Thus, the order of

learned Additional Sessions Judge cannot be sustained.

The revision is, accordingly, allowed. The order under revision dated 30.6.2000 passed by Xth Additional Sessions Judge, Kanpur Nagar in

Criminal Revision No. 421 of 1998 is quashed and the order of Additional Chief Metropolitan Magistrate dated 8.10.1999 in criminal case No.

861 of 1998 is restored. The Magistrate is directed to proceed with the case in accordance with law.

12. Learned counsel for the revisionist has further relied upon *Prashant M. Achawal Vs. Gulab Singh Raghuvanshi*, in which Hon"ble Single

Judge of Madhya Pradesh High Court has held as under:

As observed by the Court below in para 8 of the impugned order that cognisance was taken on 15.12.2005. Copies of the order sheets of the trial

Court have not been Filed by which, it could have been assessed as to after filing of the complaint what steps were taken by the learned Magistrate

in the complaint for taking the cognisance. In absence of documents, the observation of the learned Judge in para 8 it can be accepted. As argued,

when the notice was served to the petitioner on 21.11.2005, the period of 15 days expires much before 15.12.2005 when the cognisance was

taken. Thus as observed by Apex Court in aforementioned judgment of Narsingh Das Tapadia Vs. Goverdhan Das Partani and Another, , the

contention of the petitioner appears, having no force. While following the aforementioned judgment of the Supreme Court one another Bench of

this Court in Bapulal Vs. Krapachand Jain, , has taken the similar view on similar facts.

13. Learned counsel for the opposite party No. 2 has relied upon Tameeshwar Vaishnav Vs. Ramvishal Gupta, , in which Hon"ble the Apex Court

has held as under:

The provisions of Section 138 and clauses (a), (b) and (c) to the proviso thereof indicate that a cheque has to be 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. Clause (b) indicates that the payee

or the holder in due course of the cheque, has to make demand for the payment of the said amount of money by giving a notice in writing to the

drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid and clause (c)

provides that if the drawer of the cheque fails to make the payment of the said amount of money to the payee or to the holder in due course of the

cheque within 15 days of receipt of the said notice, the payee or the holder of the cheque may file a complaint u/s 142 of the Act in the manner

prescribed.

In the instant case, it is clear that the first notices were received by the Appellant on 14th June, 2006, whereas the complaints were filed on 10th

July, 2006. It must, therefore, be held that the complaints were filed beyond the period of limitation and the learned Magistrate erred in taking

cognizance on the complaints filed on the basis of the second notices issued on 7th June, 2006. Similarly, the High Court was also wrong in

affirming the order of the learned Magistrate.

14. In the aforesaid judgment, it has been further held that taking note of the amendment to Section 142(b) of the Act, this Court also held that the

complaint would have to be filed within one month from the date immediately following the day of which the period of 15 days from the date of

receipt of first notice by the drawer expires.

15. Learned counsel for the opposite party No. 2 has further relied upon *Sadanandan Bhadran Vs. Madhavan Sunil Kumar*, in which Hon"ble

the Apex Court has held as under:

Now, the question is how the apparently conflicting provisions of the Act, one enabling the payee to repeatedly present the cheque and the other

giving him only one opportunity to file an complaint for its dishonour, and that too within one month from the date the cause of action arises, can be

reconciled. Having given our anxious consideration to this question, we are of the opinion that the above two provisions can be harmonised, with

the interpretation that on each presentation of the cheque and its dishonour a fresh right - and not cause of action - accrues in his favour. He may,

therefore, without taking pre-emptory action in exercise of this such right under clause (b) of Section 138, go on presenting the cheque so as to

enable him to exercise such right at any point of time during the validity of the cheque. But, once he gives a notice under clause (b) of Section 138

he forfeits such right for in case of failure of the drawer to pay the money and the cause of action for filing the complaint will arise. Needless to say,

the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days

from the date of the receipt of the notice by the drawer, expires.

16. The dispute in hand has been categorically dealt with by Hon"ble the Apex Court in *Sadanandan Bhadran v. Madhavan Sunil Kumar* (supra),

in which it has been clearly held that period of one month for filing the complaint will be reckoned from the day immediately following the day on

which the period of 15 days from the date of receipt of the notice by the drawer expires. The law cited by learned counsel for the revisionist in

Narsingh Das Tapadia v. Goverdhan Das Partani and another (supra) do not apply to the present facts of case and the other law cited by learned

counsel for the revisionist are of different High Courts including this Court but in view of clear cut mandate in *Sadanandan Bhadran v. Madhavan*

Sunil Kumar (supra), the position of law is settled that the complaint cannot be filed before the expiry of the period of 15 days.

17. In the present case the notice was received to opposite party No. 2 on 27.2.2012 and the complaint was filed on 6.3.2012 which is much

prior to the expiry of aforesaid period of 15 days.

18. Therefore, the present complaint was pre-mature in view of proviso (c) to Section 138 read with Section 142(b) of N.I. Act because the

cause of action will arise only after expiry of 15 days" period as provided in proviso (c) to Section 138 of N.I. Act, otherwise it will frustrate the

mandate of legislature.

19. From the bare reading of proviso to Section 142(b) (as amended by Act No. 55 of 2002), it is clear that if the complaint has been filed after

expiry of one month, then it shall not preclude the Magistrate to take cognisance, if the complainant satisfies the Court regarding sufficient cause

subject to general provisions of Section 468 Cr.P.C. regarding limitation. But pre-mature filing of complaint u/s 138 read with Section 142 of N.I.

Act is not permissible otherwise there shall be so sense in providing 15 days waiting period under proviso (c) to Section 138 of N.I. Act.

20. Learned Sessions Judge, Siddharth Nagar has considered all aspects of the matter in detail and the findings are based on various judgments of

Hon"ble the Apex Court. I do not find any error of law or perversity in the said order dated 3.9.2013, by which the Court below has been

directed to pass fresh orders in the light of the observations made in the body of the judgment. The matter has to be reconsidered by the learned

magistrate, therefore, the complainant shall have the right to place his arguments before the learned magistrate. For the facts and circumstances

mentioned above, I do not find any error of law or perversity in the impugned order dated 3.9.2013. The revision is dismissed.