

**(2016) 08 MP CK 0007**

**MADHYA PRADESH HIGH COURT (INDORE BENCH)**

**Case No:** M.Cr. C. No. 2087 of 2014

Deepak S/o Manakchandji Goyal

APPELLANT

Vs

Mannalal S/o Laxminarayanji

RESPONDENT

Maheshwari

**Date of Decision:** Aug. 8, 2016

**Acts Referred:**

- Negotiable Instruments Act, 1881 (NI) - Section 138

**Citation:** (2016) ACD 899

**Hon'ble Judges:** Shri Alok Verma, J.

**Bench:** Single Bench

**Advocate:** Shri Niles Dave, learned counsel and Zulber Nain Sheikh, Advocate, for the Applicants; Shri Akshat Pahadia, learned counsel and R.K. Gupta, Senior Advocate with Prem Sadotra, Advocate, for the Respondent in M.A. Nos. 2099 and 2087 of 2014

**Final Decision:** Dismissed

### **Judgement**

@JUDGMENTTAG-ORDER

**Shri Alok Verma, J.**—This common order shall govern disposal of M.Cr.C. Nos. 2087, 2099 and 6075 of 2014.

2. These three applications under Section 482 Cr.P.C. are filed against an order taking cognizance against the applicant under Section 138 of the Negotiable Instruments Act, in Criminal Case No.728, 615 and 616 of 2013 pending before the Judicial Magistrate First Class, Kukshi, district Dhar.

3. The facts and circumstances as extracted from M.Cr.C. No.6075/2014 are that a criminal complaint was filed against the present applicant by the respondent under Section 138 of the Negotiable Instruments Act for dishonour of cheque issued by him. According to the facts stated in the complaint, a cheque was dishonoured by State Bank of India, Manawar Branch on 26.03.2013. The respondent sent a notice

by registered post on 08.05.2013 which was posted on 09.05.2013 and received by the applicant on 13.05.2013. The reply was given on 22.05.2013.

4. These applications under Section 482 Cr.P.C. are filed on the ground that cognizance taken by the Magistrate is erroneous as the notice was issued after 30 days of dishonour of cheque by the State Bank of India and therefore it was beyond time. According to the learned counsel for the applicant there is no provision in the Negotiable Instruments Act of condonation of delay, if the notice is sent after 30 days of dishonour of cheque.

5. In response, learned counsel for the respondent submits that the cheque was sent to State Bank of India which was dishonoured with a note "contact the drawer". However, the cheque was not sent to the respondent directly, but it was sent to Bank of India, Kukshi Branch and the Kukshi Branch informed the respondent only on 30.04.2013. According to him, inadvertently this fact was not mentioned properly in the complaint as also in the list of witnesses and documents and therefore he moved an application for amendment.

6. I have heard the learned counsel for both the parties and perused the record of the lower Court. It appears that the present applicant also filed an application under Section 245(2) of Cr.P.C. for discharging the applicant on various grounds interalia that the notice was sent beyond the statutory time fixed by the Act. This application was pending when the present applications were filed. In one of the cases before the learned Judicial Magistrate First Class permission for amending the complaint before issuance of summons to the present applicants was granted. However, in the list of witnesses and documents, memo dated 30.04.2013 was not mentioned.

7. In this view of the matter it appears proper to remand the matter back to the Court of Judicial Magistrate First Class for first deciding the amendment application filed by the respondent and the application filed by the present applicants under Section 245(2) of Cr.P.C.

8. After exhausting the legal remedy available to the applicants, they are at liberty to file an appropriate application before this Court. Accordingly, with direction as aforesaid, these applications are disposed of and the matter is remanded back to the lower Court for consideration of applications filed by both the parties.

9. Parties are directed to appear before the lower Court on 29.09.2016. Record of the lower Court be transmitted back to the Court concerned immediately. C.C. as per rules.