

**(1998) 07 AP CK 0005**

**Andhra Pradesh High Court**

**Case No:** Criminal P.No. 772 of 1997

Shri Vishnu Spinners, Tamilnadu

APPELLANT

Vs

Sri Bhagyalakshmi Commercial  
Corporation and another

RESPONDENT

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**Date of Decision:** July 17, 1998

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 470, 472, 473
- Limitation Act, 1963 - Section 5
- Negotiable Instruments Act, 1881 (NI) - Section 138, 139, 140, 141, 142

**Citation:** (1998) 5 ALD 274 : (1998) 2 ALD(Cri) 383 : (1999) 1 ALT(Cri) 187 : (1998) 3 APLJ 92 : (1999) 2 CivCC 246 : (1999) CriLJ 1221 : (1999) 2 RCR(Criminal) 192

**Hon'ble Judges:** B. Sudershan Reddy, J

**Bench:** Single Bench

**Advocate:** Mr. C. Damodar Reddy, for the Appellant; Mr. S. Raj Kumar and Public Prosecutor, for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

1. This is an application filed by the accused respondent in un-numbered CC -/1997 on the file the learned IV-Addl. Munsif Magistrate, Guntur. The order passed by the learned IV-Addl.Munsif Magistrate, Guntur in CrI. MP No.3651 of 1996 dated 6-1-1997 is under challenge. The first respondent herein filed complaint before the learned IV-Addl.Munsif Magistrate, Guntur against the petitioner herein for the alleged offence punishable u/s 138 of the Negotiable Instruments Act in respect of dishonour of cheque dated 25-11-95 and 15-12-95 for a sum of Rs.2 lakhs and Rs.1 lakh. It is the case of the complainant that the cheques issued by the petitioner were presented for encashment through their Bankers and the same was dishonoured for the reason "funds insufficient". Thereafter the first respondent herein got issued notice dated 6-6-1996 through his Advocate. Admittedly, the first respondent

herein could not file the complaint as required u/s 142(b) of the Negotiable Instruments Act within one month from the date on which the cause of action had arisen under Clause (c) of the proviso to Section 138. The cause of action under proviso (c) to Section 138 would arise if the drawer of the cheque failed to make the payment of the amount of money to the payee within fifteen days of the receipt of the notice to be issued under clause (b) of the said proviso. The respondent herein admittedly filed Crl. MP No.3651 of 1996 along with an affidavit to condone the delay of five days in submitting the complaint. The petitioner herein opposed the application for condonation of delay. The learned Magistrate by an order dated 6-1-1997 in Crl. MP No.3651/96 condoned the delay of five days in filing the complaint.

2. There is no dispute whatsoever that there is a delay of five days in filing the complaint. The learned Magistrate refused to place reliance upon the decision of the Kerala High Court in Kunhimammed v. Khadeeja, 1996 (1) Crimes 19 (HC) and allowed the application observing that there are conflicting decisions with regard to the application of Section 5 of the Limitation Act to the proceedings under proviso to Section 138 of the Act. The learned Magistrate further observed that in the circumstances and interest of justice, the application should be allowed.

3. The learned Magistrate mis-directed himself to the whole question that arises for consideration. Chapter XVII of the Negotiable Instruments Act is a complete package consisting the provisions of Section 138 - 142. The provisions are mandatory in their nature. Section 142 of the Act envisages that notwithstanding anything contained in Criminal Procedure Code, 1973, no Court shall take cognizance of any offence punishable u/s 138 except upon a complaint in writing made by the payee (b) such complaint is made within one month of the date on which the cause of action arise under Clause (c) to proviso to Section 138 (c).....Clause (c) of the proviso to Section 138 in turn envisages that there must be failure on the part of the drawer of the cheque to make the payment of the said amount of money to the payee within fifteen days of the receipt of the notice. Thus it is clear that the cause of action would arise only on the expiry of fifteen days of receipt of the notice by the drawer of cheque from the payee or the holder, as the case may be. Undoubtedly, these provisions are mandatory in nature. The package in Chapter XVII deals with penalties in case of dishonour of cheques for "insufficiency of funds". Section 138 makes the dishonour of cheques for insufficiency of funds in the account, an offence punishable with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both. Clauses (a)(b)(c) of proviso to Section 138 envisage exceptions and indicate as to under what circumstances. Section 138 would not be applicable. Section 139 raises presumption in favour of the holder of the cheque. Section 140 mandates as to what defence in a prosecution for an offence punishable u/s 138 is not available. Section 141 of the Act deals with offences by companies. Section 142 relates to cognizance of offence and it says that:

"Notwithstanding anything contained in the Code of Criminal Procedure, 1973 -

(a) no Court shall take cognizance of any offence punishable u/s 138 except upon a complaint.

(b) .....

(c) .....

The complete procedure for filling the complaint is envisaged by the provisions referred to hereinabove. The complaint can be filed only in accordance with the procedure prescribed in the said package and in no other manner. It requires no further illustration to show that the complaint can be filed only within the limitation prescribed u/s 142 of the Act. The provision does not give any jurisdiction or power to the Court to condone the delay. Section 5 of the Limitation Act does not confer any power upon the Court to condone the delay in filing original proceeding. The complaint is neither an appeal nor an application within the meaning of Section 5 of Limitation Act. It is true that Section 473 of the Cr.P.C. confers the power and jurisdiction upon the Court and enables the Court to take cognizance of an offence after the expiry of the period of limitation, if the Court is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice. Section 472 of Cr.P.C. is part of the general law, whereas Chapter XIII of the Negotiable Instruments Act, 1881 is a special law which prescribes a special procedure and limitation. The jurisdiction conferred upon the Courts to take cognizance of an offence after the expiry of the period of limitation u/s 473 of Cr.P.C. has no application whatsoever to a proceeding under Chapter XVII of the Negotiable Instruments Act.

4. For the aforesaid reasons, the order passed by the learned IV Additional Munsiff Magistrate, Guntur is set aside.

5. The order is accordingly quashed and the complaint shall stand dismissed.

6. The Criminal Petition is accordingly allowed.