

**(2000) 04 CAL CK 0008**

**Calcutta High Court**

**Case No:** C.R.R. No. 2239 of 1999 and C.R.A.N. 22 of 2000

Darshan Singh

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision:** April 26, 2000

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 138

**Citation:** (2000) 2 ILR (Cal) 303

**Hon'ble Judges:** Basudeva Panigrahi, J

**Bench:** Single Bench

**Advocate:** S.S. Roy and H.P. Vyase, for the Appellant; Milan Mukherjee and Purnasish Gupta, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Basudeva Panigrahi, J.

The accused in complaint case No. C/221 of 1999 filed u/s 138 of the Negotiable Instrument Act has filed this case u/s 482 of the Code of Criminal Procedure for quashing of the Criminal case mentioned before. At the time of hearing of the rule an interim stay of further proceeding of the criminal procedure was passed. Therefore, the complainant/opposite party being aggrieved by such interim order has filed an application for vacating the same.

2. The learned advocates appearing for both the parties have, however, agreed that instead of taking of the vacating application, they suggested to take up the original application for quashing of the proceeding. Therefore, the matter was taken up for hearing. The complainant/opposite Party was the Petitioner's financier for purchasing a truck on higher purchase agreement. Accordingly he availed of the loan to purchase the truck. It was agreed by and between the parties that the Petitioner shall pay higher charges in respect of the loan for 24 monthly instalments

to the opposite party No. 2 commencing from May 29, 1997. But, however, a cheque sent by the Petitioner was bounced. Therefore, the opposite party No. 2 sent a notice to the Petitioner calling upon the latter to clear up the dues. Even after receipt of the said notice when the Petitioner failed to discharge his liability towards the bounced cheque, the opposite party No. 2 was, therefore, obliged to file a complaint u/s 138 of the Negotiable Instrument Act. Pursuant to the said complaint process was issued and accordingly the Petitioner appeared before the Court below. But being aggrieved by such initiation of the criminal proceeding he has filed this case for quashing of the case.

3. Mr. S.S. Roy, the learned advocate appearing for the Petitioner has strongly contended that since the criminal complaint was barred by limitation as it was not filed within 15 days after service of notice, therefore the learned Additional Chief Judicial Magistrate ought to have dismissed the complaint on the ground of limitation. Mr. Roy has further stressed that the Petitioner received the notice on January 18, 1999, therefore, the opposite party No. 2 ought to have filed complaint within 30 days from the date of service of notice upon the Petitioner.

4. Mr. Mukherjee, the learned advocate appearing for the complainant/opposite party No. 2 has repelled the said contention of Mr. Roy by submitting that the period of limitation of 30 days should run not from the date of service of notice but from the date of knowledge of such service by the complainant. In this case the opposite party No. 2 only derived knowledge of such service after receipt of the "acknowledgement due card" from the post office on April 9, 1999, and, therefore, the complaint was filed within 30 days there from. In this background it cannot be said that the complaint was barred by limitation.

5. While examining the contention raised by both parties it is to be seen the legislative intention of filing a complaint u/s 138 of the Negotiable Instrument Act, which is quoted as follows:

Provided that nothing contained in this section shall apply unless:

(a)...

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(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.

6. In this case necessary dates may be stated. The opposite party No. 2 deposited the cheque for encashment on December 18, 1998, and it was dishonoured on the ground that the Petitioner did not have enough cash in the bank. The memo of

dishonouring of the cheque was received by the opposite party No. 2 on December 21, 1998. Therefore, the complaint/opposite party sent a letter with A/D to the Petitioner on December 22, 1998, asking the Petitioner to pay the amount failing which a case u/s 138 N.I. Act shall be initiated. The Petitioner received the notice after signing it in the A/D card on January 18, 1999. The opposite party No. 2 received the A/D card on April 9, 1999. The complaint filed the case within 30 days from the date of receipt of the A/D card.

7. While constituting of an offence u/s 138 of the Act five acts must be proved.

1. Drawing of the cheque;
2. Presentation of the cheque to the bank;
3. Returning of the cheque unpaid by the drawee bank;
4. Giving of notice in writing to the drawer of the cheque demanding payment of the cheque amount;
5. Failure of the drawer to make payment within 15 days of the receipt of the cheque.

8. In Section 142 of the Act it has, however, provided that such complaint is made within one month of the date on which the cause of action under Clause "C" of the proviso to Section 138. In Clause "C" of the proviso to Section 138 it is stated that if a drawer of cheque in question fails to make payment of the said amount to the payee or as the case may be to the holder in due course of a cheque within 15 days of the receipt of the said notice, the complaint has to be lodged within 30 days therefrom.

9. Identical question came up for consideration before the Hon'ble Supreme Court in the case of S.I.L import U.S.A. v. Exim Aides Silk Exporters, Bangalore. The said case had arisen from the judgment and order passed by the Karnataka High Court. The High Court was of course of the view that the case should be filed within 45 days from the date of receipt of the acknowledgement which the Hon'ble Supreme Court has disagreed and mandated that the case has to be filed u/s 142 of the Act within 30 days of the date of receipt of the notice by the drawer.

Para 19. The High Court's view is that the sender of the notice must know the date when it was received by the sender, for otherwise he would not be in a position to count the period in order to ascertain the date when cause of action has arisen. The fallacy of the above reasoning is that it erases the starting date of the period of 15 days envisaged in Clause (c). As per the said clause the starting date is the date of "the receipt of the said notice". Once it starts, the offence is completed on the failure to pay the amount within 15 days therefrom. Cause of action would arise if the offence is committed.

para 20. If a different interpretation is given the absolute interdict incorporated in Section 142 of the Act that no Court shall take cognizance of any offence unless the

complaint is made within one month of the date on which the cause of action arises, would become otiose.

10. Once the cause of action has started running, it cannot remain suspended subsequently. Under Clause "C" to the proviso to Section 138 the cause of action will start running from the date of receipt of the notice but not from the date of receipt of the "acknowledgement due card". It is true that in the above case the notice was sent in two ways, one by fax message, and the other by registered post with A/D. In that case the date of notice was taken from the date of receipt of the fax message and the limitation was accordingly allowed to run from the date of receipt of the fax message. The Karnataka High Court was under erroneous view that the limitation shall run from the date of receipt of the "acknowledgement due card" by the complainant. The receipt of the "acknowledgement due card" by the complainant is not material for the purpose of computation of limitation. Only the receipt of notice by the drawer is an important factor from which day the cause of action shall accrue and within 30 days there from the complaint has to be filed failing which it would be barred by limitation u/s 142 of the Act.

11. Mr. Mukherjee, the learned advocate appearing for the opposite party No. 2 has relied upon a judgment reported in the case of Santa Priya Engineers Pvt. Ltd. and Anr. v. Uday Sankar Das and Anr. 1993 Cri. L.R. cal. 236. It is true that the learned Single Judge Mr. A.K. Dutta (as he then was) held that the cause of action shall accrue from the date of receipt of the "acknowledgement due card" by the complainant but in view of the authoritative pronouncement of the Supreme Court it is bound to be held that the aforesaid judgment is no longer good law and impliedly overruled. In this case the complaint has not been filed within a month from the date of receipt of the notice i.e. on January 18, 1999. Accordingly the complaint seems to be prima facie barred by limitation u/s 142 of the Act. In the result the application is allowed and the Criminal case No. 221 of 1999 is hereby quashed.

Application allowed.