

M/s. Saketh India Ltd.

Vs

M/s. India Securities Ltd.

Criminal Appeal Nos. 288-289 of 1999.

(K.T. Thomas, M.B. Shah JJ)

10.03.1999

JUDGMENT

M.B. Shah, J.

1. Leave granted.

2. The short question involved in these appeals is whether the complaint filed by the respondent under Section 138 of the Negotiable Instruments Act is within or beyond time as it is contended that it is not filed within one month from the date on which the cause of action arose under clause (c) of the proviso to Section 138 of the Negotiable Instruments Act (hereinafter referred to as "the Act").

3. In the present case, cheques dated 15th and 16th March, 1995 issued by the appellants bounced when presented for encashment as per the bank endorsement. Notices were served on the accused on 29th September, 1995. As per section 138(c) accused were required to make payment of the said amount of money within 15 days. The accused failed to pay the said amount, hence the cause of action for filing the complaint arose from 15th October, 1995. Complaints were filed on 15th November, 1995. Therefore, it is contended that complaints were filed beyond time. Accused petitioners approached the High Court by filing petition under Section 482 of the Criminal Procedure Code for quashing and setting aside the process issued by the XI Additional Chief Metropolitan Magistrate, Bangalore. Those petitions were rejected by the High Court by common order and Judgment dated 25th September, 1997. Hence, these appeals.

4. For appreciating the contention raised by the learned Counsel for the appellants, it would be necessary to reproduce sections 138 and 142 of the Act which are as under :-

*"138. Dishonour of cheque for insufficiency, etc. of funds in the account. - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished 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 :*

Provided that nothing contained in this section shall apply unless :-

(a) the cheque has been 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;

(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 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.

142. *Cognizance of offences.* - Notwithstanding anything contained in the Code of Criminal Procedure, (1973), -

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138."

5. Aforequoted Section 138 of the Act *inter alia* provides that where any cheque drawn by a person is returned by the Bank unpaid, such person shall be deemed to have committed an offence, however, it will apply, if conditions mentioned in clauses (a), (b) and (c) are satisfied. Section 142 further provides that Court shall take cognizance of any offence punishable under Section 138 on a written complaint made by the payee or the holder in due course, if such complaint is filed within one month of the date on which the cause of action arises. A month is to be reckoned according to the British Calendar as defined in the General Clauses Act, 1897. The question would be whether for calculating the period of one month which is prescribed under Section 142(b), the period has to be reckoned by excluding the date on which the cause of action arose ?

6. Similar contention was considered by this Court in the case of *Haru Das Gupta v. State of West Bengal, 1972(1) SCC 639* wherein it was held that the rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that day is to be excluded; the effect of defining period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. In the context of that case, the Court held that in computing the period of three months from the date of detention, which was February 5th, 1971, before the expiration of which the order or decision for confirming the detention order and continuing the detention thereunder had to be made, the date of the commencement of detention, namely, February 5th has to be excluded; so done, the order of confirmation dated May 5th, 1971 was made before the expiration of the period of three months from the date of detention. The Court held that there is no reason why the aforesaid rule of construction followed consistently and for so long should not be applied. For the aforesaid principle Court referred to the principle followed in English Courts. The relevant discussion is hereunder :-

"These decisions show that courts have drawn a distinction between a term created

within which an act may be done and a time limited for the doing of an act. The rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded. (See *Goldsmith Company v. The West Metropolitan Railway Company*, 1904 KB 1 at 5). This rule was followed in *Cartwright v. McCormack*, 1963(1) All ER 11 at 13 where the expression "fifteen days from the commencement of the policy" in a cover note issued by an insurance company was construed as excluding the first date and the cover note to commence at midnight of that day and also in *Marren v. Dawson Bentley & Co. Ltd.*, 1961(2) WB 135 a case for compensation for injuries received in the course of employment, where for purposes of computing the period of limitation the date of the accident, being the date of the cause of action, was excluded. (See also *Stewart v. Chadman*, 1951(2) KB 792 and *In re North, Ex parte Wasluck*, 1895(2) QB 264. *Thus, as a general rule the effect of defining a period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day.* (See *Halsbury's Laws of England*, (3rd ed.), vol. 37, pp. 92 and 95.) There is no reason why the aforesaid rule of construction followed consistently and for so long should not also be applied here."

7. The aforesaid principle of excluding the day from which the period is to be reckoned is incorporated in Section 12(1) and (2) of the Limitation Act, 1963. Section 12(1) specifically provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. Similar provision is made in sub-section (2) for appeal, revision or review. The same principle is also incorporated in Section 9 of General Clauses Act, 1897 which, *inter alia*, provides that in any Central Act made after the commencement of the General Clauses Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any other period of time, to use the word 'to'.

8. Hence, there is no reason for not adopting the rule enunciated in the aforesaid case which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act. Ordinarily in computing the time, the rule observed is to exclude the first day and to include the last. Applying the said rule, the 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 the receipt of the notice by the drawer, expires. Period of 15 days, in the present case, expired on 14th October, 1995. So cause of action for filing complaint would arise from 15th October, 1995. That day (15th October) is to be excluded for counting the period of one month. Complaint is filed on 15th November, 1995. The result would be that the complaint filed on 15th November is within time.

9. Hence, the appeals are dismissed.

Appeal dismissed.