

SUPREME COURT OF INDIA

Rameshchandra Ambalal Joshi

Vs.

State of Gujarat

Crl.A.No.434 of 2014

(Chandramauli Kr. Prasad and Jagdish Singh Khehar JJ.)

18.02.2014

JUDGMENT

CHANDRAMAULI KR. PRASAD, J.

1. According to the complainant-respondent No. 2, the accused- petitioner, Rameshchandra Ambalal Joshi was his friend, who had taken a loan of Rs.1,00,000/- (Rupees one lac only) from the complainant. The petitioner issued a cheque dated 31st of December, 2005 towards repayment of the loan. The cheque presented for payment by the complainant on 30th of June, 2006 was dishonoured on the ground of insufficiency of funds on the same day. A registered notice dated 25th of July, 2006 was then sent by the complainant to which the petitioner replied. The complainant then filed Criminal Case No. 2146 of 2006 on 5th of September, 2006 alleging commission of offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') in the Court of Judicial Magistrate, First Class, Borsad, who took cognizance of the offence and issued summons to the petitioner.

2. An application for discharge was filed by the petitioner before the trial court inter alia contending that as a period of six months had lapsed between the date of drawl of the cheque on 31st of December, 2005 and its presentation by the complainant on 30th of June, 2006 for payment, the petitioner cannot be prosecuted. The prayer of the petitioner was rejected by the trial court on its finding that the provisions of discharge were not applicable to the present proceeding, they being in the nature of summons trial.

3. A criminal revision application against the aforesaid order, filed by the petitioner before the Court of Sessions, Anand was rejected by an order dated 5th of May, 2009, which the petitioner assailed in a petition filed under Section 482 of the Code of Criminal Procedure before the High Court. The High Court by its order dated 20th of August, 2010 rejected the application of the petitioner, observing as under:

“7. Though the submission has been made by the learned counsel, Mr. Hakim raising the contention with regard to the limitation, bare perusal of the provisions of Section 138 of the Negotiable Instrument Act, would make it clear that what law provides is presentation within a period of six months, meaning thereby, the Legislature has provided the period of six months by way of limitation. It is also clear that each month may not have same number of days and, therefore, wisely what has been provided in terms of months and not exact date or days, meaning thereby, 180 days. Therefore, cheque drawn on the last date of month of December would remain valid for a period of six months and the period of six months would expire after the last date of June i.e. 30th June, 2006. Therefore, in the facts and circumstances of the case, as the cheque has already been presented on 30th June, 2006, it cannot be said that it is barred by limitation. Therefore, the submission made by the learned counsel, Hakim cannot be readily accepted.”

It is against this order that the petitioner has preferred this special leave petition.

Leave granted.

4. Mr. Huzefa Ahmadi, learned senior counsel draws our attention to proviso (a) of Section 138 of the Negotiable Instruments Act and contends that to attract its mischief the cheque is required to be presented in the Bank within six months from the date of its drawl. Otherwise, Section 138 of the Act would not apply. Section 138 of the Act, which is relevant for our purpose reads as follows:

“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 provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

5. 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;

xxx xxx xxx”

We are in agreement with Mr. Ahmadi and, in fact, it is apparent from a plain reading of proviso (a) aforesaid that Section 138 of the Act would apply only when the cheque is presented to the Bank within a period of six months from the date on which it is drawn or within period of its validity, whichever is earlier.

6. Mr. Ahmadi then points out that the cheque is valid from the date it is drawn and hence period of six months has to be calculated from the said date. On facts, he points out that the cheque was drawn on 31st of December, 2005 and presented on 30th of June, 2006, which is beyond the period of six months. He submits that cheque is valid from the date shown in it and therefore for calculation of six months, the date on which the cheque is drawn has to be included. He has suggested the following two modes of calculation:

“CALCULATION OF THE PERIOD OF 6 MONTHS AS PRESCRIBED UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881.

DATE OF DRAWL OF CHEQUE – 31.12.2005

DATE OF PRESENTATION OF CHEQUE– 30.06.2006

[No. of days in the relevant |Month-wise calculation | |months | | |January – 31 days |1st Month | | |31st December to 30th January| |February – 28 days

|2nd Month | | |30th January to 27th February| |March – 31 days |3rd Month |
| |27th February to 30th March | |April – 30 days |4th Month | | |30th March
to 29th April | |May – 31 days |5th Month | | |29th April to 30th May | |June –
30 days |6th Month | | |30th May to 29th June |

OR

|No. of days in the relevant |Month-wise calculation | |months | | |January –
31 days |1st Month | | |31st December to 30th January| |February – 28 days
|2nd Month | | |31ST January to 27th February| |March – 31 days |3rd Month
| | |28th February to 27th March | |April – 30 days |4th Month | | |28th March
to 27th April | |May – 31 days |5th Month | | |28th April to 27th May | |June –
30 days |6th Month | | |28th May to 27th June |

7. To put the record straight, the modes suggested, in fact, do not reflect his submission. He, however, submits that whichever mode is adopted, the cheque was not presented within the period of six months. In support of the submission, he has placed reliance on a decision of the Kerala High Court in the case of K.V. Muhammed Kunhi vs. P. Janardhanan [1998 CRL.L.J. 4330] and our attention has been drawn to the following passage from the said judgment:

“3.A comparative study of both the Sections in the Act and the General Clauses Act significantly indicate that the period of limitation has to be reckoned from the date on which the cheque or instrument was drawn. The words ‘from’ and ‘to’ employed in Section 9 of the General Clauses Act are evidently clear that in cases where there is an ambiguity or suspicion with reference to the date of commencement of period of limitation in any Act or special enactment, the words ‘from’ and ‘to’ employed in Section 9 of the General Clauses Act can be pressed into service. But in the instant case before me, Section 138 proviso (a) is involved which is so clear (as extracted above) that the date of limitation will commence only from the date found in the cheque or the instrument.”

8. Mr. Ahmadi submits that the aforesaid view has been approved by this Court in the case of Sivakumar vs. Natarajan (2009) 13 SCC 623 in the following words:

“14.A comparative study of both the Sections in the Act and the General Clauses Act significantly indicate that the period of limitation has to be reckoned from the date on which the cheque or instrument was drawn.

The words ‘from’ and ‘to’ employed in Section 9 of the General Clauses Act are evidently clear that in cases where there is an ambiguity or suspicion with reference to the date of commencement of period of limitation in any Act or special enactment, the words ‘from and ‘to’ employed in Section 9 of the General Clauses Act can be pressed into service.

We are in agreement with the aforementioned view.”

9. It may look like a repetition of the judgment but its relevance would be apparent from what we have observed in the subsequent paragraphs of this judgement.

10. Given the general importance of the question involved, we had requested Mr. V.Giri, learned Senior Counsel, to assist us as amicus curiae and he very generously agreed to do so. We have also heard Ms. Hemantika Wahi, learned counsel appearing on behalf of the respondents.

They contend that the period of six months had expired on 30th of June, 2006 i.e. the date on which the cheque was presented, which is within six months from the date it was drawn. They submit that as a general rule, in case of any ambiguity, Section 9 of the General Clauses Act, 1897 provides for exclusion of the first day and inclusion of the last day for the purpose of calculating commencement or termination of time. They submit that the date of issue of cheque, i.e. 31st of December, 2005 is to be excluded and the last day, i.e. 30th of June, 2006 is to be included for the purpose of calculating the period of six months under proviso (a) of Section 138 of the Act. According to the learned counsel, since the last day of the six months’ period was 30th of June, 2006 and the cheque was presented on that very same day, the complaint under Section 138 of the Act is not time barred.

We have given our most anxious consideration to the submissions advanced and we do not find any substance in the submission of Mr. Ahmadi that the cheque was not presented to the Bank within a period of six months from the date on which it was drawn and the judgments relied on go against him instead of supporting his contention.

The first question which calls for our answer is the meaning of the expression “month”: whether it would mean only a period of 30 days and, consequently, whether six months would mean a period of 180 days. The word “month” has been defined under Section 3(35) of the General Clauses

Act to mean a month reckoned according to the British calendar. Therefore we cannot ignore or eschew the word 'British calendar' while construing "month" under the Act. Accordingly, we are of the opinion that the period of six months cannot be calculated on 30 days in a month basis. Therefore, both the modes of calculation suggested by Mr.Ahmadi do not deserve acceptance and are rejected accordingly.

The next question which calls for our answer is the date from which six months' period would commence. In case of ambiguity with reference to the date of commencement, Section 9 of the General Clauses Act can be pressed into service and the same reads as follows:

"9. Commencement and termination of time.-(1) In any Central Act or Regulation made after the commencement of this 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".

From the judgment of this Court in the case of Sivakaumar(supra) and as quoted in the preceding paragraph of this judgment, it is evident that this Court recorded its agreement to a limited extent that "in cases where there is an ambiguity or suspicion with reference to the date of commencement of period of limitation" "Section 9 of the General Clauses Act can be pressed into service." We would hasten to add that this Court in Sivakumar (supra) did not give nod to the following proposition enunciated by the Kerala High Court in K.V.Muhammed Kunhi (supra).

"3.....But in the instant case before me, Section 138 proviso (a) is involved which is so clear (as extracted above) that the date of limitation will commence only from the date found in the cheque or the instrument."

In the case of K.V.Muhammed Kunhi (supra) the cheque was dated 17.11.1994 and that was presented on 17.5.1995, and in this background the Court observed as follows:

"5. When on the footing of the days covered by the British calendar month the period of limitation in the case on hand is calculated, the cheque ought to have been presented in the Bank for collection on or before 16-5-

1995. But in this case, as pointed out above the cheque had been presented for collection only on 17-5- 1995, which is clearly barred by limitation.”

In this case, six months’ period expired a day prior to the corresponding month. In the case in hand, no such day falls in the corresponding month and therefore the last day would be last date of the immediate previous month.

Mr. Ahmadi appeals to us that if we take the view that the cheque was presented to the Bank before the expiry of six months, it would be in the teeth of the judgment of this Court in the case of Sivakumar (supra) and therefore the matter shall be required to be referred to a larger Bench. From what we have observed above, we have not taken a view different than what has been held in Sivakumar (supra) and therefore we do not find any necessity to refer the case to a larger Bench.

Proviso (a) to Section 138 of the Act uses the expression “six months from the date on which it is drawn”. Once the word ‘from’ is used for the purpose of commencement of time, in view of Section 9 of the General Clauses Act, the day on which the cheque is drawn has to be excluded.

This Court, relying on several English decisions, dealt with the issue of computation of time for the purpose of limitation extensively in Haru Das Gupta v. State of West Bengal, (1972) 1 SCC 639 wherein Paragraph 5 states as follows:

“5. 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 *Goldsmiths Company v. The West Metropolitan Railway Co.* (1904 KB 1 at 5). This rule was followed in *Cartwright v. Maccormack* (1963) 1 All E.R. 11, where the expression “fifteen days from the date of 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 and Co. Ltd.*, (1961) 2 QB 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.”

(underlining ours)

This decision was quoted with approval in Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 in the following words:

“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 the 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.....”

The correctness of this judgment came up for consideration before a three-Judge Bench of this Court in Econ Antri Ltd. vs. Rom Industries Ltd. & Anr., AIR 2013 SC 3283 which approved the reasoning of this Court given in Saketh (supra) and Haru Das Gupta (supra) and held as under:

“16. We have extensively referred to Saketh. The reasoning of this Court in Saketh based on the above English decisions and decision of this Court in Haru Das Gupta which aptly lay down and explain the principle that where a particular time is given from a certain date within which an act has to be done, the day of the date is to be excluded, commends itself to us as against

the reasoning of this Court in SIL Import USA where there is no reference to the said decisions.

XXX XXX XXX

“143. Calendar month running from arbitrary date. When the period prescribed is a calendar month running from any arbitrary date the period expires with the day in the succeeding month immediately preceding the day corresponding to the date upon which the period starts; save that, if the period starts at the end of a calendar month which contains more days than the next succeeding month, the period expires at the end of the latter month.”

Drawing a conclusion from the above mentioned authorities, we are of the opinion that the use of word “from” in Section 138(a) requires exclusion of the first day on which the cheque was drawn and inclusion of the last day within which such act needs to be done. In other words, six months would expire one day prior to the date in the corresponding month and in case no such day falls, the last day of the immediate previous month. Hence, for all purposes, the date on which the cheque was drawn, i.e., 31.12.2005 will be excluded and the period of six months will be reckoned from the next day i.e. from 1.1.2006; meaning thereby that according to the British calendar, the period of six months will expire at the end of the 30th day of June, 2006. Since the cheque was presented on 30.6.2006, we are of the view that it was presented within the period prescribed.

Viewed from any angle, the prosecution is not time barred and therefore, cannot be scuttled at this stage on this ground. As the matter is pending since long, the learned Magistrate in seisin of the trial shall make endeavour to conclude it within six months from the date the appellant next appears in the case. We direct the appellant to appear before the trial Judge on 3rd of March, 2014 and no notice is to be issued to him for his appearance.

In the result, we do not find any merit in the appeal and it is dismissed accordingly.