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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA**

ON THE 3rd OF JULY, 2023

MISC. CRIMINAL CASE No. 55612 of 2021

BETWEEN:-

**MOHAMMAD ARIF S/O GULAM HUSSAIN, AGED 48
YEARS, OCCUPATION: BUSINESS R/O 17/4, MOHANPURA
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI RAVINDRA UPADHYAY - ADVOCATE)

AND

**ANIL S/O LATE RAMCHANDRA SOLANKI, AGED 46
YEARS, R/O 7, BOMBAY BAZAR (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI OMPRAKASH SOLANKI - ADVOCATE)

.....
*This application coming on for hearing this day, the court passed the
following:*

ORDER

This petition u/S 482 of Code Of Criminal Procedure, 1973 filed against the impugned order dated 27.07.2018 passed by Additional Chief Judicial Magistrate, Indore in criminal case No.3347/2018 whereby, the learned trial Court has taken cognizance against the petitioner for the offence u/S 138 of the Negotiable Instrument Act, 1881 (hereinafter as NI Act).

2. The respondent/complainant filed a complaint (Annexure P-2) u/S 138 of the NI Act against the petitioner/accused stating that there was friendship between both the parties. The petitioner had taken loan of Rs.4,00,000/- from the respondent and had issued a cheque (Annexure P-3). The complainant

produced the cheque in the concerning bank but the cheque was bounced with bank endorsement "funds insufficient". Notice was served on the petitioner/accused on 28.08.2017, but thereafter, the petitioner has not made payment of the said amount of money within 15 days. The accused failed to pay the said amount, hence respondent/complainant filed the complaint u/S 138 of the NI Act on 13.10.2017. The trial Court on 27.07.2018 has prima facie found that the respondent/complainant has filed the complaint within limitation and has taken cognizance in the aforementioned offence. Accordingly, the impugned order has been passed.

3. Learned counsel for the petitioner submits that as per Section 138(c) of the NI Act, petitioner/accused was required to make the payment of the said amount of the money within 15 days. The notice which was served to the petitioner on 28.08.2017 therefore, cause of action for filing the complaint arose on 13.09.2017, hence, the complaint should have been produced till 12.10.2017, but the complainant has filed the complaint delayed by one day on 13.10.2017. Though the complainant had filed an application u/S 5 of The Limitation Act, 1963 r/w S.142(b), but the same was withdrawn by him. Hence, the trial Court has committed error in law by taking cognizance on the complaint which was delayed by 1 day. Therefore, the impugned order is not sustainable and liable to be set aside.

4. On the other hand, the learned counsel for the respondent/complainant has supported the impugned order and prayed for rejection of the petition. The learned counsel has placed reliance on the case of *M/S Saketh India Ltd. And Ors. Vs M/S India Securities Ltd.* [AIR 1999 SC 1090] and *Econ Antri Ltd. Vs Rom Industries Ltd. And Anr.* [AIR 2013 SC 3283]

5. I have heard learned counsel for the parties.

6. For appreciating the contention raised by the learned counsel for the parties, it appears that the sought question is involved in this petition that whether the complaint filed by the respondent u/S 138 of the NI Act, is within a period of limitation or not. In this respect it would be necessary to reproduce Sections 138 and 142 of the NI 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 4 [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:

Provided that nothing contained in this section shall apply unless—

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(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, 5 [within thirty 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.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other

liability.

142. Cognizance of offences.—1 [(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(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:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(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.].

[(2) The offence under Section 138 shall be inquired into and tried only by a Court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.]”

7. On plain reading of Section 138 of the NI Act, it is clear 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 u/S 138 of the NI Act are satisfied as well as within the limitation period prescribed u/S 142 of the NI Act.

8. In the case of *M/S Saketh India Ltd. And Ors. (Supra)*, the Apex Court has observed in Para 6 as under:-

Similar contention was considered by this Court in the case of [Haru Das Gupta vs. 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 vs. The West Metropolitan Railway Company* : 1904 KB 1 at 5) This rule was followed in *Cartwright vs. Maccormack* : (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 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 Halllbury'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."

9. In the case of **Econ Antri Ltd.(Supra)**, the Apex Court in Para 25 has held as under:-

25. Having considered the question of law involved in this case in proper perspective, in light of relevant judgments, we are of the opinion that Saketh lays down the correct proposition of law. We hold that for the purpose of calculating the period of one month, which is prescribed under [Section 142\(b\)](#) of the N.I. Act, the period has to be reckoned by excluding the date on which the cause of action arose. We hold that SIL Import USA does not lay down the correct law. Needless to say that any decision of this Court which takes a view contrary to the view taken in Saketh by this Court, which is confirmed by us, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly.

10. Admittedly, in the instant case, notice served to the petitioner on 28.08.2017. As per Section 138(c) of the NI Act, the petitioner was required to make payment of the said amount of money within 15 days. The petitioner failed to pay the said amount hence, the cause of action for filing the complaint arose from 13.09.2017. The principle laid down in the aforementioned case laws by the Apex Court that for the purpose of calculating the period of one month which is prescribed u/S 142(b) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose, which means in computing the time, the rule observed is to exclude the first day and to include

the last. The complainant filed a complaint before the trial Court on 13.10.2017. Therefore, it is clear that cause of action arose on 13.09.2017 and the instant complaint was filed within 30 days i.e., on 13.10.2017. Therefore, learned trial Court has rightly found that petition is within limitation and the trial Court has not committed any illegality or irregularity in passing the impugned order.

Accordingly, the present petition filed under Section 482 of Cr.P.C. sans merit and is hereby dismissed.

(PRAKASH CHANDRA GUPTA)
JUDGE

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