



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL REVISION PETITION No. 1021 OF 2017

BETWEEN:

ARUMUGAM
S/O. SHAMU
AGED ABOUT 38 YEARS
RESIDING AT No. 174/2
7TH CROSS, HONGASANDRA
BEGUR MAIN ROAD
BANGALORE – 560 068.

...PETITIONER

(BY SRI PRAVEEN C, ADVOCATE)

AND:

ANANDA
S/O ASWTHAPPA
AGED ABOUT 29 YEARS
No.596, 2ND FLOOR
SRK, OPP ROAD
NEAR ROSE APARTMENTS
DODDATHOGURU
ELECTRONIC CITY
BANGALROE – 560 076.

...RESPONDENT

(BY SRI B C RAJANNA, ADVOCATE)





THIS CRL.RP IS FILED UNDER SECTION 397 READ WITH SECTION 401 Cr.P.C PRAYING TO SET ASIDE THE ORDER DATED 03.04.2017 IN C.C.No.8433/2016 BY THE LEARNED XIX ADDITIONAL CHIEF METROPOLITAN MAGISTRATE AT BANGALORE AND IN CRL.A.No.649/2017 DATED 20.09.2017 BY THE LEARNED LXVI ADDITIONAL SESSIONS JUDGE AT BANGALORE, ACQUIT THE PETITIONER AND ETC.,

THIS PETITION COMING ON FOR FURTHER HEARING THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

ORAL ORDER

1. This revision petition is directed against the judgment dated 20.09.2017 passed in Crl.A. No. 649/2017 by LXVI Additional City Civil and Sessions Judge, Bengaluru, whereunder the judgment of conviction of petitioner dated 03.04.2017 passed in C.C. No. 8433/2016 by the XIX ACMM, Bengaluru, convicting the petitioner for offence punishable under Section 138 of the Negotiable Instruments Act (for short hereinafter referred to as the N.I. Act) has been affirmed.

2. Heard learned counsel for petitioner and learned counsel for respondent.



3. Brief facts of the prosecution case is that the petitioner – accused approached the respondent – complainant for financial help in order to develop his business and borrowed hand loan of Rs.1,00,000/-. In order to repay the said amount he had issued cheque bearing No. 223137 dated 10.12.2025 for a sum of Rs.1,00,000/- drawn on Canara Bank, Begur Branch, Bengaluru. Said cheque, on presentation, came to be dishonoured for reason `funds insufficient' under Bank memo dated 21.12.2015. The respondent – complainant got issued demand notice dated 30.12.2015 and the same came to be served on the petitioner – accused on 01.01.2016. The respondent – complainant presented the complaint on 13.01.2016. The trial Court, took cognizance against the petitioner – accused for offence under Section 138 of the N.I. Act. The complainant examined himself as P.W.1 and got marked Ex.P.1 to Ex.P.4. Statement of the accused has been recorded under Section 313 of Cr.P.C. The accused has examined himself as D.W.1 and got



marked Ex.D.1 and Ex.D.2. The trial Court, appreciating the evidence on record, has convicted the petitioner – accused for offence under Section 138 of the N.I. Act and imposed sentence of fine of Rs.1,75,000/- and in default, to undergo simple imprisonment for 6 months. Said judgment of conviction has been challenged by the petitioner – accused before the Sessions Court in CrI.A. No. 649/2017 and the same came to be dismissed. The petitioner – accused has filed this revision petition challenging the said judgments.

4. Learned counsel for petitioner would contend that the legal notice has been served on the petitioner on 01.01.2016 and complaint is filed on 13.01.2016. The complaint has been filed prior to accrual of cause of action and therefore, the complaint is a pre-mature complaint.

5. Learned counsel for respondent – complainant admits that the complaint is a pre-mature complaint and he seeks liberty to file a fresh complaint against the petitioner – accused by condoning the delay.



6. Having heard learned counsel for the parties, this Court has perused the impugned judgments and trial Court records.

7. This fact is not in dispute that after dishonouring of the cheque issued by the petitioner – accused, the respondent – complainant filed a criminal complaint against the petitioner – accused under Section 138 of the N.I. Act before the XIX Additional Chief Metropolitan Magistrate, Bengaluru, on 13.01.2016. This fact is also not in dispute that after dishonouring of the cheque issued by the petitioner – accused, the respondent – complainant sent a legal notice to the petitioner – accused on 30.12.2015 asking him to pay the cheque amount within a period of 15 days. The record indicates that the petitioner – accused has received the said legal notice on 01.01.2016. The respondent – complainant filed a complaint under Section 138 of the N.I. Act against the petitioner accused on 13.01.2016. This fact is also not in dispute that the petitioner – accused faced trial for the



above offence and finally he was found guilty for the aforesaid offence by the trial Court vide judgment dated 03.04.2017 wherein the petitioner – accused has been convicted and sentenced to pay fine of Rs.1,75,000/- and in default of payment of fine, to undergo simple imprisonment for 6 months. This fact is also not in dispute that aggrieved by the said judgment, an appeal was filed by the petitioner – accused before the Sessions Court and the appellate Court has dismissed the appeal filed by the petitioner – accused confirming the judgment of conviction.

8. A perusal of Section 138(c) of N.I. Act indicates that offence under Section 138 is made only if the drawer of the cheque fails to make the payment of the cheque amount of money to the payee or to the holder in due course of the cheque within 15 days of the receipt of the notice. If the payment is not made by the drawer of the cheque within 15 days of receipt of notice, then as per Section 142(b) of the N.I. Act a complaint can be filed



within a period of 1 month on the date on which the cause of action arises under Section 138(c) of the N.I. Act. Cognizance can only be taken upon a complaint submitted in writing.

9. The issue involved in this revision petition is no more res integra as this issue came before the Hon'ble Apex Court in the case of **Yogendra Pratap Singh Vs. Savitri Pandey** reported in **(2015) AIR (SC) 157** where the Apex Court formulated the following 2 questions for consideration.

- i. Can cognizance of an offence punishable u/s 138 of the Negotiable Instruments Act 1881 be taken on the basis of a complaint filed before the expiry of the period of 15 days stipulated in the notice required to be served upon the drawer of the cheque in terms of Section 138(c) of the Act aforementioned? And,*
- ii. If answer to question No. 1 is in the negative, can the complainant be permitted to present the complaint again notwithstanding the fact that the period of*



one month stipulated u/s 142(b) for the filing of such a complaint has expired?

10. The Apex Court in the case of **Yogendra Pratap Singh (supra)** while interpreting the provisions contained under Sections 138 and 142 of the N.I. Act answered the above two questions in paragraph Nos. 34 to 41 and they read thus:

34. Insofar as the present reference is concerned, the debate broadly centers around clause (c) of the proviso to Section 138 of the NI Act. The requirement of clause (c) of the proviso is that the drawer of the cheque must have failed to make the payment of the cheque amount to the payee within 15 days of the receipt of the notice. Clause (c) of the proviso offers a total period of 15 days to the drawer from the date of receipt of the notice to make payment of the cheque amount on its dishonour.

35. Can an offence under Section 138 of the NI Act be said to have been committed when the period provided in clause (c) of the proviso has not expired? Section 2(d) of the Code defines 'complaint'. According to this definition, complaint means any allegation made orally or in writing to a



Magistrate with a view to taking his action against a person who has committed an offence. Commission of an offence is a sine qua non for filing a complaint and for taking cognizance of such offence. A bare reading of the provision contained in clause (c) of the proviso makes it clear that no complaint can be filed for an offence under Section 138 of the NI Act unless the period of 15 days has elapsed. Any complaint before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint at all in the eye of law. It is not the question of prematurity of the complaint where it is filed before expiry of 15 days from the date on which notice has been served on him, it is no complaint at all under law. As a matter of fact, Section 142 of the NI Act, inter alia, creates a legal bar on the Court from taking cognizance of an offence under Section 138 except upon a written complaint. Since a complaint filed under Section 138 of the NI Act before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint in the eye of law, obviously, no cognizance of an offence can be taken on the basis of such complaint. Merely because at the time of taking cognizance by the Court, the period of 15 days has expired from the date on which notice has been served on the drawer/accused, the Court is not



clothed with the jurisdiction to take cognizance of an offence under Section 138 on a complaint filed before the expiry of 15 days from the date of receipt of notice by the drawer of the cheque.

36. A complaint filed before expiry of 15 days from the date on which notice has been served on drawer/accused cannot be said to disclose the cause of action in terms of clause (c) of the proviso to Section 138 and upon such complaint which does not disclose the cause of action the Court is not competent to take cognizance. A conjoint reading of Section 138, which defines as to when and under what circumstances an offence can be said to have been committed, with Section 142(b) of the NI Act, that reiterates the position of the point of time when the cause of action has arisen, leaves no manner of doubt that no offence can be said to have been committed unless and until the period of 15 days, as prescribed under clause (c) of the proviso to Section 138, has, in fact, elapsed. Therefore, a Court is barred in law from taking cognizance of such complaint. It is not open to the Court to take cognizance of such a complaint merely because on the date of consideration or taking cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer/accused has elapsed. We have no doubt that all the five



essential features of Section 138 of the NI Act, as noted in the judgment of this Court in Kusum Ingots & Alloys Ltd. and which we have approved, must be satisfied for a complaint to be filed under Section 138. If the period prescribed in clause (c) of the proviso to Section 138 has not expired, there is no commission of an offence nor accrual of cause of action for filing of complaint under Section 138 of the NI Act.

37. We, therefore, do not approve the view taken by this Court in Narsingh Das Tapadia and so also the judgments of various High Courts following Narsingh Das Tapadia¹ that if the complaint under Section 138 is filed before expiry of 15 days from the date on which notice has been served on the drawer/accused the same is premature and if on the date of taking cognizance a period of 15 days from the date of service of notice on the drawer/accused has expired, such complaint was legally maintainable and, hence, the same is overruled.

38. Rather, the view taken by this Court in Sarav Investment & Financial Consultancy wherein this Court held that service of notice in terms of Section 138 proviso (b) of the NI Act was a part of the cause of action for lodging the complaint and communication to the accused about the fact of



dishonouring of the cheque and calling upon to pay the amount within 15 days was imperative in character, commends itself to us. As noticed by us earlier, no complaint can be maintained against the drawer of the cheque before the expiry of 15 days from the date of receipt of notice because the drawer/accused cannot be said to have committed any offence until then. We approve the decision of this Court in Sarav Investment & Financial Consultancy and also the judgments of the High Courts which have taken the view following this judgment that the complaint under Section 138 of the NI Act filed before the expiry of 15 days of service of notice could not be treated as a complaint in the eye of law and criminal proceedings initiated on such complaint are liable to be quashed.

39. Our answer to question (i) is, therefore, in the negative.

40. The other question is that if the answer to question (i) is in the negative, can the complainant be permitted to present the complaint again notwithstanding the fact that the period of one month stipulated under Section 142(b) for the filing of such a complaint has expired.



41. Section 142 of the NI Act prescribes the mode and so also the time within which a complaint for an offence under Section 138 of the NI Act can be filed. A complaint made under Section 138 by the payee or the holder in due course of the cheque has to be in writing and needs to be made within one month from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. The period of one month under Section 142(b) begins from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. However, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within the prescribed period of one month, a complaint may be taken by the Court after the prescribed period. Now, since our answer to question (i) is in the negative, we observe that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to question (i). As we have already held that a complaint filed before the expiry of 15 days from



the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the Court of sufficient cause. Question (ii) is answered accordingly.”

11. Question No. (i) was answered by the Hon’ble Apex Court by holding that the complaint under Section 138 of the N.I. Act filed before the expiry of 15 days of service of notice cannot be treated as a complaint in the eye of law and criminal proceedings initiated on such complaint are liable to be quashed. Thereafter, the second question was answered by the Apex Court that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and in that event, delay in filing the complaint will be treated as having been condoned under proviso to clause (b) of Section 142 of the N.I. Act.



12. It is worthy to note here that this decision was made applicable to all such pending cases where a complaint was submitted prior to the expiry of 15 days from receipt of the notice.

13. The aforesaid view taken by the Hon'ble Apex Court in the case of **Yogendra Pratap Singh (supra)** has been followed by the Hon'ble Apex Court in the case of **Gajanand Burange Vs. Laxmi Chand Goyal** reported in **2022 LiveLaw (SC) 682** wherein in paragraph Nos. 7 to 11 it has been held as under:

"7. In the present case, while the notice was received by the appellant on 8 November 2005, the complaint was filed before the period of fifteen days was complete. The complaint could have been filed only after 23 November 2005, but was filed on 22 November 2005. In view of the legal bar which is created by Section 142 of the NI Act, as explained in the three-Judge Bench decision of this Court, taking of cognizance by the Court was contrary to the law and the complaint was not maintainable before the expiry of the period of fifteen days from the date of its receipt by the appellant.



8. However, on behalf of the respondent, it has been urged that the second issue which was raised before the three-Judge Bench has been dealt with in the following terms:

"41... Now, since our answer to Question (i) is in the negative, we observe that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to Question (i). As we have already held that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying



the court of sufficient cause. Question (ii) is answered accordingly.”

9. We are of the view that the respondent would be entitled to the benefit of the determination on the second issue, as extracted above.

10. Hence, the following order:

(i) The impugned judgment and order of the Single Judge of the High Court of Chhattisgarh dated 28 November 2018 shall stand set aside; and

(ii) The respondent would be at liberty to institute a fresh complaint and since the earlier complaint could not be presented within the time prescribed by Section 142(b) of the NI Act, the respondent would be at liberty to seek the benefit of the proviso by satisfying the trial court of sufficient cause for the delay in instituting the complaint.

11. In the event that the second complaint is filed within a period of two months from the date of this order, we request the trial court to dispose of the complaint within a period of six months.”

14. From the aforesaid law laid down by the Hon'ble Apex Court in the case of **Yogendra Pratap Singh**



(supra) and **Gajanand Burange (supra)** it is apparent that in a case where the complaint was filed before the expiry of 15 days stipulated in the notice which is required to be served upon the drawer of the cheque, the Court cannot take cognizance thereof. However, second complaint on the same cause of action has been held to be maintainable and the delay in filing such complaint shall be deemed to have been condoned.

15. The petitioner – accused even though has not taken up the said defence before the trial Court and the appellate Court has taken up said contention in the present revision petition.

16. Drawer of the cheque cannot be allowed to escape from prosecution merely on a technical count that a premature complaint was filed against him before expiry of the statutory period of 15 days as per the mandate of Section 138(c) of N.I. Act. Such drawer of the cheque is liable to be prosecuted in a second successive complaint filed on the same facts by the holder of the cheque. The



drawer of the cheque would not be absolved from penal consequences of dishonouring of cheque issued by him/her.

17. Following the judgments passed by the Hon'ble Apex Court in the case of **Yogendra Pratap Singh (supra)** and **Gajanand Burange (supra)** it can be safely held that the impugned judgments passed by the trial Court and the appellate Court are not sustainable in the eye of law and the same are liable to be set aside and they are hereby set aside.

18. Judgment passed by the XIX Additional Chief Metropolitan Magistrate, Bengaluru, stands modified granting liberty to the respondent – complainant to file a fresh complaint against the petitioner – accused within a period of 1 month from today. In case such complaint is filed by the respondent – complainant within a period of 1 month, the delay in filing the complaint would be condoned under proviso to Section 142 of the N.I. Act. It is expected from the trial Court to decide the said



complaint after affording due opportunity of hearing to the petitioner – accused expeditiously as early as possible, preferably within a period of 6 months thereafter.

19. The trial Court is further directed to return all the original / certified documents to the respondent – complainant after retaining the certified copies of the same on record.

20. Accordingly, the instant criminal revision petition stands disposed off.

21. Needless to observe that the trial Judge would decide the matter on merits of the case and after considering the evidence led by both the sides. The trial Court would not be influenced by any of the observations made hereinabove while deciding the complaint.

22. Registry is directed to transmit the trial Court records to the trial Court along with copy of this order forthwith.

23. Amount in deposit, deposited by the petitioner – accused, shall be kept in Fixed Deposit in Karnataka



Bank, CMM Court Branch, in the name of the Deputy Registrar for a period of 6 months with auto renewal and successful party is entitled to the said amount in deposit.

Sd/-
(SHIVASHANKAR AMARANAVAR)
JUDGE

LRS
List No.: 1 SI No.: 24