

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3342 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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DAVE PRUTHVISHKUMAR BHANUPRASAD

Versus

STATE OF GUJARAT

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Appearance:

MR NALIN K THAKKER for Petitioners

MR SP DAVE ADDL PUBLIC PROSECUTOR for Respondent No. 1

MR HM PARIKH for Respondent No. 2

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 30/07/1999

ORAL JUDGEMENT

#. The petitioners herein challenge the complaint lodged against them by respondent No.2 before the learned JMFC, Anand vide Criminal Case No : 6136 of 1996 under the provisions of 138, 141 and 142 of the Negotiable Instruments Act.

#. The facts in brief are that according to the complainant, the petitioners gave two cheques of Rs.40,000/- each dated 1st July, 1996 and 31st July, 1996. These two cheques were presented on 21st August, 1996 for encashment. The said cheques came to be returned on 23rd August, 1996. The petitioners were therefore served with a notice dated 4th September, 1996. According to the petitioners, a notice could not have been received by them earlier than 6th September, 1996 as 5th September, 1996 was a holiday on account of Janmasthan festival. The complaint came to be lodged on 20th September, 1996, as a result, the complainant did not wait for completion of mandatory period of 15 days after service of notice which lodging the complaint and therefore, the complaint was premature and without cause of action.

#. Mr.H.M.Parikh, learned advocate for the respondent No.2 has given these details and has placed reliance on decision of Hon'ble High Court as reported in 1997 (3) Crimes page 294 and submitted that the Court may not technically interpret these requirements of Section 138.

#. What transpires from the papers factually is not disputed and if that be so, if the notice is received by the petitioners on 6th September, 1996 or later, the complaint which is lodged on 20th September, 1996 is definitely premature and the cause of action would arise only on expiry of the mandatory period of 15 days as has been held by the Hon'ble Apex Court in the decision rendered in case of SADANAND BHADRAN VS. MADHVAN SUNIL KUMAR (1998) 6 Supreme Court Cases 514. Under these circumstances, in light of the above, the decision relied upon by Mr.Parikh cannot help his case.

#. Therefore, under these circumstances, the petition deserves allowance and the same is allowed. The Criminal Case No : 6136 of 1996 and the subsequent proceedings are hereby quashed and set aside. Rule is made absolute accordingly.

Date : 30-7-1999 [ A.L.Dave, J. ]

#kailash#