

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2056 of 2001

with

CRIMINAL MISC.APPLICATIONS No 2769 & 2770 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  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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Versus

STATE OF GUJARAT  
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Appearance:

MR MP SHAH for Petitioners  
MS. KRUTI M SHAH for Petitioners  
MR VM PANCHOLI, APP, for Respondent No. 1  
MR PARTHIV B SHAH for Respondent No. 2.  
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/12/2001

ORAL JUDGEMENT

1. In these three petitions, a common question

arises for consideration of this Court - whether the complaints filed in these cases under Section 138 of the Negotiable Instruments Act were time barred and whether the quashment because of this factor is called for.

2. The relevant dates, which are not in dispute, in these three matters can be stated thus :-

2.1 In Misc. Criminal Application No.2056 of 2001, cheque dated April 10, 1998 for Rs.25 lakhs was issued in name of Navjivan Kelavani Trust by the petitioner. The cheque was presented for encashment, initially, in the month of July 1998 and was dishonoured. The cheque was again presented in the month of October 1998 and it was again dishonoured. On the first dishonour, a notice was issued on July 11, 1998, which was received by the petitioner on July 13, 1998. The complaint was filed on December 23, 1998.

2.2 In Misc. Criminal Application No.2769 of 2001, a cheque for Rs.10 lakhs was issued on April 20, 1998. It was presented for encashment and was dishonoured and, therefore, notice was issued on July 17, 1998, which was replied to by the petitioner on August 20, 1998. The cheque was again presented for encashment and was dishonoured in the month of October 1998 and the complaint came to be filed on December 21, 1998.

2.3 In Misc. Criminal Application No.2770 of 2001, cheque for Rs.3,27,000/- was issued on June 30, 1998. The cheque was presented to the bank and was dishonoured and, therefore, notice was issued on July 15, 1998. Reply to the notice was given on August 20, 1998. The cheque was again presented for encashment in the month of September 1998 and was dishonoured in October 1998. The complaint came to be filed on December 21, 1998.

3. It is clear and undisputed that in all three matters, cheques issued were, initially, presented for encashment within period of validity and were dishonoured. On dishonour of the cheques, notices were issued and were replied to. Thereafter, no legal action was taken as provided under Section 138 of the Negotiable Instruments Act. The cheques were presented again for encashment and on dishonour, again notices were issued and, thereafter, complaint came to be lodged.

4. Learned advocate for the petitioner places

reliance on the decision in the case of *Sadanandan v. Madhavan*, 1999(3) GLR, 2351, wherein it was held that a cheque can be presented to the bank for payment on number of times during period of its validity. On each occasion of non-payment, a right accrues in favour of the drawee, but not a cause of action. Once the drawee gives notice to the drawer under Section 138 on failure of the drawer to pay the money, the cause of action arises and the prosecution must be launched within period of limitation.

5. In the cases before this Court, on each occasion of dishonour of cheque on the first presentation for encashment, notices were issued. That was somewhere in July 1998. The cause of action arose in each case on non-payment by the drawer on expiry of stipulated period after notice was served. The complaint came to be filed in December 1998. It is, therefore, very clear that the complaints are lodged beyond the period of limitation envisaged under Section 138 of the Negotiable Instruments Act. The petitions, therefore, deserve to be allowed.

6. Learned advocate Mr. Shah for respondent No.2-original complainant has, however, a strong grievance against the petitioners. According to him, series of complaints have been lodged against the petitioner and the petitioner avoids attending the Court and, as a result of which, the cases do not proceed and non-bailable warrants are required to be issued by the Court and to that also, no heed is paid by the petitioners. Mr. Shah, therefore, urged that this Court may not exercise the powers under Section 482 of the Code of Criminal Procedure in favour of such a person who does not honour the order of the Court.

7. At this stage, a statement is made at the Bar by learned advocate for the petitioner Ms. K.M. Shah that the petitioner undertakes to remain present before the Magisterial Court in rest of the four or five cases under Section 138 of the Negotiable Instruments Act on the next date. The petitioner could not remain present on earlier occasions because of his ill-health. He is at a crucial stage of his life facing last stage of tuberculosis

8. In view of the above discussion on merits and the statement made at the Bar by Ms. Shah, the petitions deserve to be allowed. The same are allowed. The complaints impugned in these petitions are hereby quashed. Rule is made absolute accordingly.

9. Direct service is permitted.

[ A.L. DAVE, J. ]

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