

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
(SB: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

M.Cr.C. No.7565/2012

Rupam S/o Ashok Jain,
Aged 26 years. Occ. - Business,
R/o – 204, Kanchan Vihar,
5, Kanchan Bagh, Indore (M.P.) Petitioner

Vs.

Sharad S/o Bhagwandasji
(partner M/s naturals)
Occ. - Business,
R/o – 203, Kanchan Vihar,
5, Kanchan Bagh, Indore (M.P.) Respondent

Shri A. Salim, learned counsel for the petitioner.
Shri Ajay Mishra, learned counsel for the respondent.

Whether approved for reporting :

ORDER

(Passed on 28/2/2013)

1/ This petition under Section 482 of the Cr.P.C. is directed against the order dated 24.9.2012 passed by the JMFC, Indore rejecting the petitioner's application under Section 245 of the Cr.P.C. for discharge.

2/ A complaint has been filed by the respondent against the petitioner alleging commission of offence under Section 138 of the Negotiable Instruments Act (for short "the Act"). In the said proceedings the petitioner had filed an application under Section 245 of the Cr.P.C. raising an objection that since the notice in terms of Proviso (b) of Section 138 of the Act was not given within a period of 30 days, therefore, the proceedings are incompetent and the petitioner is liable to be discharged. The said application has been rejected by the trial Court.

3/ There is no dispute between the parties in respect of the relevant dates. Undisputedly the respondent had come to know about the dishonour of Cheque on 26.11.2011 and he had sent the notice, as required by the Proviso (b) of Section 138 of the Act, on 26.12.2011. If the date of receipt of

intimation of dishonour of Cheque is excluded, then the notice was given within time but if the said date is also included, then the notice was given on the 31st day of the receipt of intimation. The submission of counsel for the petitioner is that the notice was given on the 31st day i.e. beyond the period of 30 days, whereas learned counsel for the respondent submits that the notice was given within 30 days' period.

4/ I have heard the learned counsel for parties and perused the record.

5/ The Supreme Court in the matter of **Saketh India Ltd. and others Vs. India Securities Ltd.** reported in **1999(3) SCC 1** has considered the similar controversy In respect of proviso (c) to Section 138 of the Negotiable Instrument Act and has held as under:-

“6. Similar contention was considered by this Court in the case of Haru Das Gupta v. State of W.B. [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 date is to be excluded; the effect of defining the 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 5-2-1971, 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 5-5-1971 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, the Court referred to the principle followed in English courts. The relevant discussion is hereunder: (SCC p. 641, para 5)

“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' Co. v. West Metropolitan Rly. 1904(1) KB 1, 5) This rule was followed in Cartwright v. MacCormack: (1963) 1 All ER 11, 13, 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 & 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. Chapman: (1951) 2 KB 792 and North, Re, ex p Hasluck: (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 Edn.), 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.”

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, 1987 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. Ordinarily in computing the time, the rule observed is to exclude the first day and to include the last. Applying the said rule, the period of one month for filing the complaint will be reckoned from the date immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer expires. The period of 15 days in the present case expired on 14.10.1995. So cause of action for filing complaint would arise from 15.10.1995. That day (15th October) is to be excluded for counting the period of one month. Complaint is filed on 15.11.1995. The result would be that the complaint filed on 15th November is within time.”

6/ Proviso (b) and (c) of Section 138 contain the similar phrase ie “within ----- days of the receipt of”. Therefore, the said judgment applies with full force while calculating the period of limitation under Proviso (b) of Section 138 of the Act. The Trial Court in this regard has also rightly placed reliance upon the judgment of the High Court in the matter of **Ravi Vs. Kutappan** reported in 2007(2) DCR 729.

7/ Learned counsel for petitioner has placed reliance

upon the judgments of this Court in the matter of **Rajeev Dubey v. Kuldeep Singh Thakur** reported in **2006 Cr.LJ 3829**, in the matter of **Devendra Kumar Surana v. Lalit** reported in **2002(2) MPWN 241** and in the matter of **Krishna Chandra Sharma and others Vs. Ramgulam and another** reported in **AIR 1958 MP 295** but they do not relate to the interpretation of the provision relating to the limitation as prescribed under Section 138 of the Negotiable Instrument Act and they have rightly been distinguished by the trial Court.

8/ Thus, no case for interference in the order of the trial Court is made out. The petition is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
J u d g e

Trilok.