

Crl. M.C. No. 18/2016
Kunsang Tenzing Tamang vs. Pem Choden Bhutia

BEFORE
MR. JUSTICE SATISH K. AGNIHOTRI, CJ.

04. 21.02.17 Present: Mr. A.K. Upadhyaya, Sr. Advocate with Ms. Hemlata Sharma, Advocate for the Petitioner.

Mr. Jorgay Namka and Ms. Panila Theengh,
 Advocates for the Respondent.

...

Impugning the order dated 05.04.2016 rendered by the Chief Judicial Magistrate, East Sikkim at Gangtok in the petition filed under the provisions of Section 138 read with Sections 141 and 142 of the Negotiable Instruments Act, 1881 (in short, 'the Act of 1881), the petitioner submits that the learned Magistrate has committed an error in taking cognizance of the complaint which was filed beyond 45 days.

2. Mr. Upadhyaya, learned Senior Counsel would further contend that Section 142 (1) (b) of the Act of 1881, clearly contemplate that no Court shall take cognizance of a complaint which is made beyond one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138. It is next urged that in the case on hand, the notice was issued on 12.01.2016, which according to learned Senior Counsel was received on 21.01.2016, thereafter, the reply was filed on 22.02.2016, counting the period of 30 days from the date cause of action arose, the last date of filing the

complaint was 04.03.2016. The complaint was filed on 18.03.2016 after a delay of 14 days. The learned Senior Counsel would further contend that the Court may take cognizance of the complaint even after the prescribed period, if the complainant satisfies the Court by sufficient cause, for not making the application, within prescribed period. The Court has not recorded any reason and also not insisted on filing of an application for condonation of delay. Thus, issuance of notice under the provisions of the Act is erroneous, illegal and deserves to be quashed.

3. On the other hand, Mr. Jorgay Namka, learned counsel appearing for the respondent would urge that that facts stated by the petitioner are contrary to the facts on record. In fact, the complaint was filed on 03.03.2016, which was registered as Private Complaint Case No. 08 of 2016. The learned Court has taken cognizance and recorded the facts on its proceeding dated 04.03.2016 as is evident from the proceedings dated 04.03.2016. Thus, the basic premise raised by the petitioner is erroneous and deserves to be rejected.

4. I have considered the disputed facts in respect of issuance of notice, dates of submission of reply and also filing of the complaint. Without going into the allegations on merit and also the contents of the complaint, it is found that the Chief Judicial Magistrate has recorded the

proceedings on 04.03.2016 wherein it is clearly stated that the case filed as private complaint by the respondent herein on 03.03.2016 and registered as Private Complaint Case No. 08 of 2016. The pleadings as averred by the petitioner are as under:

".....Therefore, the Respondent was eligible to take action under NI Act by 04.03.2016, whereas the Complainant/Respondent has filed the complaint on 18.03.2016 i.e. after delay of 14 days of the limitation period."

5. Thus, there is no dispute on the fact that the complaint was filed within the prescribed time and as such no application and/or justification was required to be submitted by the complainant for being considered by the Magistrate before taking cognizance of the complaint.

6. In such view of the matter, nothing survives for adjudication, the petition is dismissed.

7. No order as to costs.

Sd/-
Chief Justice
21.02.2017

jk/to **Index : Yes / No**
 Internet : Yes / No