

(2013) 08 SC CK 0132

In the Supreme Court Of India

Case No : Criminal Appeal No. 1090 of 2013

Kumudrai Jayantilal Joshi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Citation : (2014) 2 CCR 660

Hon'ble Judges : Jasti Chelameswar, J;H.L. Gokhale, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. D.N. Ray, learned Counsel appearing for the Appellant and Ms. Rehnuma, learned Counsel appearing for the Respondent No. 2. Ms. Shubhaddo Deshpande, learned Counsel appearing for Respondent No. 1 is also present. The Respondent had issued an account-payee cheque dated 20th October, 2003 for an amount of Rs. 92,035/- drawn on Unnati Cooperative Bank Ltd., Baroda Branch, Baroda, which was in favour of the Appellant. The cheque was not honoured and was returned on 14th November, 2003. On 18th November, 2003, the Appellant/complainant issued notice to the Respondent to make the payment as per the cheque. The Appellant filed a complaint being Criminal Case No. 1139 of 2003 before the learned Judicial Magistrate, Ist Class, Una, on 1st December 2003 for seeking orders u/s 138 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act'). The learned Magistrate issued the process on the complaint and being aggrieved by issuance of the process the Respondent No. 2 herein filed Criminal Miscellaneous Application No. 1411 of 2005 in the High Court of Gujarat to (sic)ash the said process by invoking Section 482 of the Code of Criminal Procedure.

2. It was submitted before the learned Judge of the Gujarat High Court that the Respondent-complainant had filed the complaint without waiting for the expiry of 15 days from the date of service of notice on the Appellant as required by Section 138 proviso (c) of the N.I. Act and that being so, the Magistrate was not

expected to take cognizance of the case. The learned Single Judge of the Gujarat High Court accepted that submission by relying upon the judgment of this Court in the case of *Sadanandan Bhadran Vs. Madhavan Sunil Kumar*, The learned Judge therefore allowed the Criminal Miscellaneous Application and quashed the proceedings of Criminal Case No. 1139 of 2003. Being aggrieved by that judgment and order dated 26.3.2009, this SLP (Crl.) has been filed.

3. Leave granted.

4. We have heard learned Counsel for both the parties. Mr. D.N. Ray, learned Counsel appearing for the Appellant points out that the learned Judge was in error in relying upon the judgment in *Sadanandan Bhadran's* case (*supra*) which was altogether on a different point, namely, when there is a repeated dishonour on presentation of a cheque that would not give rise to a separate cause of action. That was not the case in the present case. The complainant had undoubtedly filed a complaint before the expiry of 15 days from the date of service of notice but in his submission that would not mean that the Magistrate was not expected to take cognizance of the complaint. He relied upon the judgment of this Court in *Narsingh Das Tapadia Vs. Goverdhan Das Partani and Another*, Wherein this Court has clearly taken a view that it may at the highest means that such a complaint is premature, but it can await maturity. Therefore mere presentation of the complaint cannot be held to mean that the cognizance has to be taken by the Magistrate. The Magistrate can take cognizance after expiry of 15 days. What was expected on the part of the Magistrate was to await for the expiry of statutory period of 15 days and then issue the process. It is true that in the present case, the Magistrate had issued the process before expiry of 15 days, but in any case, that period is now over. That being so, we allow this appeal and set aside the order passed by the High Court in Criminal Case No. 1139 of 2003 filed before the Magistrate Court. The learned Magistrate will proceed with Criminal Case No. 1139 of 2003. He shall endeavour to dispose of it in six months since it is an old case.