
(2001) 06 GUJ CK 0002
In the Gujarat High Court

Case No : Criminal Revision Application No. 69 of 2001

Prakashbhai Bapalal Modi

APPELLANT

Vs

Nirmal Madha Education Trust

RESPONDENT

Date of Decision : 14-06-2001

Acts Referred:

Citation : (2001) 06 GUJ CK 0002

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Advocate : F.B. Brahmbhatt, for the Appellant; P.T. Chacko, for Respondent No. 1, S.T. Mehta, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D.C. Srivastava, J.—In this revision, order dated 12-12-2000 of the learned Metropolitan Magistrate Court No.13, Ahmedabad is under challenge. List has been revised thrice but, none appears for respondent nos.1 and 2. Shri ST Mehta, learned APP appears for respondent no.3. Shri FB Brahmbhatt for the revisionist and Shri ST Mehta for respondent no.3 have been heard.

2. The facts giving rise to this revision are as under :- A cheque dated 3-11-1999 was issued which was deposited in bank by the revisionist on 2-5-2000. The cheque was issued in the name of the revisionist. The concerned bank dishonoured the said cheque on 3-5-2000. Statutory notice under sec. 138 was given by the revisionist on 15-5-2000, which was served on the respondent nos.1 and 2 on 16-5-2000. A complaint was filed on 1-7-2000.

3. In the Criminal Case No.395/2000 filed by the revisionist, objection was raised from the side of the respondent nos.1 and 2 that the complaint was time barred. This objection was sustained by the learned Metropolitan Magistrate, who held that the complaint was time barred, and as such, the complaint was dismissed. The order of the learned Magistrate closing the complaint is contrary to law.

4. A similar controversy arose before the Apex Court in M/s. Saketh India Limited

and Other v. M/s. India Securities Limited reported in JT 1999 (2) SC 67. In this case, the Apex Court relied upon its earlier judgment in Haru Das Gupta Vs. The State of West Bengal, . The facts in M/s. Saketh's case were almost identical. In this case also, the complaint under sec. 138 of the Negotiable Instruments Act was filed. Statutory notice was served on the accused on 29-9-1995. According to the Apex Court, fifteen days period was over and cause of action for filing the complaint arose on 15-10-1995. Complaint was filed on 15-11-1995. The question was, whether such complaint was within limitation. It was held that the date on which the cause of action arose has ordinarily to be excluded, and if, this is done, the complaint filed on 15-11-1995 was in time. The Apex Court has considered the provisions of secs. 12(1) and 12(2) of the Limitation Act and also sec. 9 of the General Clauses Act, 1897. Relying upon these provisions, the Apex Court held that, ordinarily in computing the time the rule observed is to exclude the first 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 date on which the period of fifteen days from the date of receipt of notice by the drawer expires.

5. Similar contention was raised in the case of Haru Das Gupta (supra) and the said case was considered by the Apex Court in this case as well.

6. Applying these two verdicts of the Apex Court to the facts of the case in this revision, it is found that the cheque was dishonoured on 3-5-2000. Statutory notice was given on 15-5-2000, which was received by the respondent nos.1 and 2 on 16-5-2000. This date has to be excluded. Fifteen days period thereafter will be over on 31-5-2000. Cause of action, therefore, accrued on 1-6-2000. The date of accrual of cause of action, in view of the Apex Court's verdict cited above, has to be excluded and thus limitation has to be computed from 2-6-2000. The complaint, in the instant case, was filed on 1-7-2000. The complainant could have filed complaint upto 2-7-2000. In this view of the matter, it can not be accepted that the complaint filed by the revisionist was time barred. The view taken by the concerned Magistrate is, therefore, patently contrary to law and also contrary to the two Apex Court's verdicts stated above.

7. For the reasons given above, the revision succeeds and is hereby allowed. The impugned order is hereby set aside. The learned Metropolitan Magistrate is directed to proceed with the complaint in accordance with law.