
(2012) 02 JH CK 0004

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 667 of 2000 (R)

Rajendra Sao

APPELLANT

Vs

The State of Bihar and Babu Lal

RESPONDENT

Date of Decision : 21-02-2012

Acts Referred:

General Clauses Act, 1897 — Section 27

Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2012) 3 JCR 600

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prashant Kumar

1. This application has been filed for quashing the order dated 20th September, 1999 passed by Judicial Magistrate, 1st Class, Dhanbad in C.P. Case No. 66 of 1999, whereby and where under, learned court below took cognizance of offence u/s 138 of the Negotiable Instrument Act (for short N.I. Act) against the petitioner. Sri Rahul Kumar, Learned Counsel for the petitioner submitted that the cheque issued on 17th July, 1998 and it was presented in the bank on the same day. It is further submitted that the cheque was dishonored by the bank on 17th July, 1998 itself, thereafter, complainant gave demand notice on 18th July, 1998. Thus, cause of action arose for filing complaint petition after 15 days from 18th July, 1998. It is submitted that according to the provision of Section 142 of the N.I. Act, complaint petition required to be filed within one month from the date of cause of action. Accordingly, it is incumbent upon the complainant to file complaint petition by 25th September, 1998. It is submitted that present complaint petition filed on 18th January, 1999 i.e. much after 30 days from the date on which the cause of action arose. Thus, the impugned order is barred by law of limitation.

2. Learned A.P.P. after going through the counter affidavit filed by Opposite Party

No. 2 has not disputed aforesaid factual submission.

3. Having heard the submission I have gone through the record of the case. Admittedly, the cheque issued on 17th July, 1998 and same presented in the bank on that day itself. It further appears that said cheque dishonored by the bank on the same day. From perusal of Annexure-E, I find that a demand notice sent to the petitioner on 18th July, 1998 through registered post. Under the aforesaid circumstance, as per Section 27 of General Causes Act, it will be presumed that the notice served upon the petitioner on 18th July, 1998 itself.

4. According to Proviso-C to Section 138 of N.I. Act, cause of action arose after 15 days from the date of receipt of notice. As stated above in this case notice served on 18th July, 1998, thus, the cause of action arose in this case on 3rd August, 1998.

5. As per Section 142(b), it is incumbent upon the complainant to file complaint petition within one month from the date on which the cause of action arose. Admittedly complaint petition filed on 18th January, 1999. Thus, the same has been filed after one month of the date on which cause of action arose. Accordingly, I find that the learned court below took cognizance in violation of provisions of Section 142 of the N.I. Act. Therefore, same cannot be sustained. Accordingly, this application is allowed. The impugned order dated 20th September, 1999 passed by Judicial Magistrate, 1st Class, Dhanbad in C.P. Case No. 66 of 1999 is hereby quashed.