
(2015) 03 AHC CK 0186
In the Allahabad High Court
Case No : Criminal Revision No. 2062 of 2003

Rashid

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245(2)
General Clauses Act, 1897 — Section 9
Limitation Act, 1963 — Section 12(1)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) 2 ACR 2201

Hon'ble Judges : Pramod Kumar Srivastava, J.

Bench : Single Bench

Advocate : Sanjeev Kumar Pandey, for the Appellant

Judgement

Pramod Kumar Srivastava, J.—Present revision has been filed with regard to the cheque issued by revisionist in favour of the complainant- opposite party No. 2 was dishonored on 15.5.2002, then complainant issued notice dated 30.5.2002 to the revisionist regarding dishonor of said cheque. Limitation for issuance of said notice under Section 138 (A) of N.I. Act is 15 days and revisionist moved application under Section 245 (2) , Cr.P.C. before the Magistrate Court that issuance of notice is time barred as 15th day of limitation had ended on 29.5.2002. After hearing the parties, learned Magistrate had held that the said notice is not time barred because after disclosure of cheque on 15.5.2002, last date of limitation of issuance of notice under Section 138 , N.I. Act was 30.5.2002, accordingly application under Section 245 (2) , Cr.P.C. of revisionist was rejected by the court below through its order dated 16.7.2003. Aggrieved by this impugned order, accused revisionist had preferred present revision. List has been revised. No one is present on behalf of the revisionist.

2. Heard learned A.G.A. and perused the record.

3. In Haru Das Gupta Vs. The State of West Bengal, , the Supreme Court has

held as under:

"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. This rule was followed in *Cartwright v. Maccormack*, 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. Damson Bentley and Co. Ltd.*, 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. 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. There is no reason why the aforesaid rule of construction followed consistently and for so long should not also be applied here.

6. In computing the period of three months from the date of detention, which was February 5, 1971, before the expiration of which the order or decision for confirming the detention order and continuation of the detention thereunder had to be made, the date of the commencement of detention namely, February 5, 1971, has to be excluded. So done, the order of confirmation was made before the expiration of the period of three months from the date of detention."

4. In *M/s. Saketh India Limited and others Vs. M/s. India Securities Limited*, , the Supreme Court has held as under:

"6. Similar contention was considered by this Court in the case of *Haru Das Gupta Vs. The State of West Bengal*, , 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:

"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. This rule was followed in *Cartwright v. Maccormack*, All ER at p. 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 and Co. Ltd.*, 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. 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. [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, 1897 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 day 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."

5. The settled legal position is that in computing the time for limitation, the general rule is to exclude the first day and to include the last day. In the present case, it is admitted case of the parties that after receiving notice of dishonor of cheque on 15.5.2002, fifteen days time of limitation was available to complainant. It is a matter of simple calculation, notice of dishonor of cheque was received on 15.5.2002 after that 15 days time was available to the complainant for issuing notice to accused revisionist after receiving notice of

dishonor of cheque on 15.5.2002, fifteen days time for issuance of notice was available to complainant, which ended on 30.5.2002. On this date, notice was issued to accused. This notice is well within period of limitation. There is no mistake of calculation in computing of period of limitation by learned Magistrate, who has rightly held that notice in question under Section 138A of N.I. Act was well within period of limitation. There was no illegality, impropriety or any factual or legal error in the impugned order passed by the Magistrate in its impugned order dated 16.7.2003. Therefore, the revision fails and is accordingly dismissed.