

A.F.R.

Neutral Citation No. - 2024:AHC:38337

Court No. - 78

Case :- MATTERS UNDER ARTICLE 227 No. - 7895 of 2023

Petitioner :- Sudesh Kumar

Respondent :- State of UP and another

Counsel for Petitioner :- Surendra Prasad Mishra

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Surendra Prasad Mishra, learned counsel for the petitioner and Sri Pankaj Saxena, learned A.G.A.-I along with Ms. Divya Ojha, learned A.G.A.-I, appearing for the State respondent.
2. The present petition has been filed seeking to assail the order dated 02.12.2021 passed in Complaint Case No. 293 of 2021, under Section 138 of the Negotiable Instruments Act, 1881¹, in terms of which the petitioner has been summoned, and also the subsequent order dated 21.06.2023 passed in Criminal Revision No. 39 of 2022.
3. Counsel for the petitioner has confined his challenge to the aforesaid order only on the question of limitation.
4. Attention of the Court has been drawn to the fact that a cheque drawn by the petitioner, upon being presented by the respondent no. 2, on 18.09.2019, was returned unpaid by the bank, along with a return memo dated 17.12.2019, with a remark "Amount Insufficient".
5. Upon receipt of the aforesaid return memo, the respondent no. 2 gave a notice dated 04.01.2020 to the petitioner regarding return of the cheque, and the said notice was received by the petitioner on 08.01.2020.

1 N.I. Act

6. On the basis of the aforesaid notice, counsel for the petitioner has sought to contend that the limitation would run from 08.01.2020 i.e. the date when the legal notice was received by the petitioner, and the complaint having been filed on 20.02.2020, was beyond time, and was liable to be rejected.

7. Learned A.G.A.-I submits that the complaint having been filed within one month from the date when the cause of action arose, the same was within the prescribed period of limitation, and, therefore, the orders passed by the courts below cannot be faulted on the question of limitation.

8. In order to examine the challenge to the orders of the courts below, on the ground of limitation, the events leading to filing of the complaint may be summarized as under:

DATE	EVENTS
18. 09. 2019	Cheque presented
17. 12. 2019	Return Memo by the bank
04.01.2020	Legal Notice
08.01.2020	Notice received
23.01.2020	Expiry of 15 days' period from date of receipt of notice
20. 02. 2020	Complaint filed

9. The relevant statutory provisions, as contained in Sections 138 and 142, may also be reproduced, for ease of reference:-

"Section 138 - Dishonour of cheque for insufficiency, etc., of funds in the account- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any

amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months' from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice."

"142. Cognizance of offences (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138:

Provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,-

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated."

10. The proviso to Section 138 stipulates three distinct conditions, which must be satisfied, before the dishonour of a cheque, may be held to constitute an offence and become punishable: i.e. (i) cheque is presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier; (ii) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; (iii) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

11. It is only upon a cumulative satisfaction of the aforesaid three conditions, as enumerated under the proviso to Section 138, as clauses (a), (b) and (c), thereof that an offence under Section 138, can be said to have been committed by the person issuing the cheque.

12. The provisions relating to cognizance of offences is contained under Section 142 of the N.I. Act. The section starts with a *non obstante clause*, and in terms thereof, no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or as the case may be the holder in due course of the cheque, and such complaint is to be made within one

month of the date on which the cause-of-action arises under clause (c) of the proviso to Section 138.

13. The proviso to clause (b) of sub-section (1) of Section 142 prescribes that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

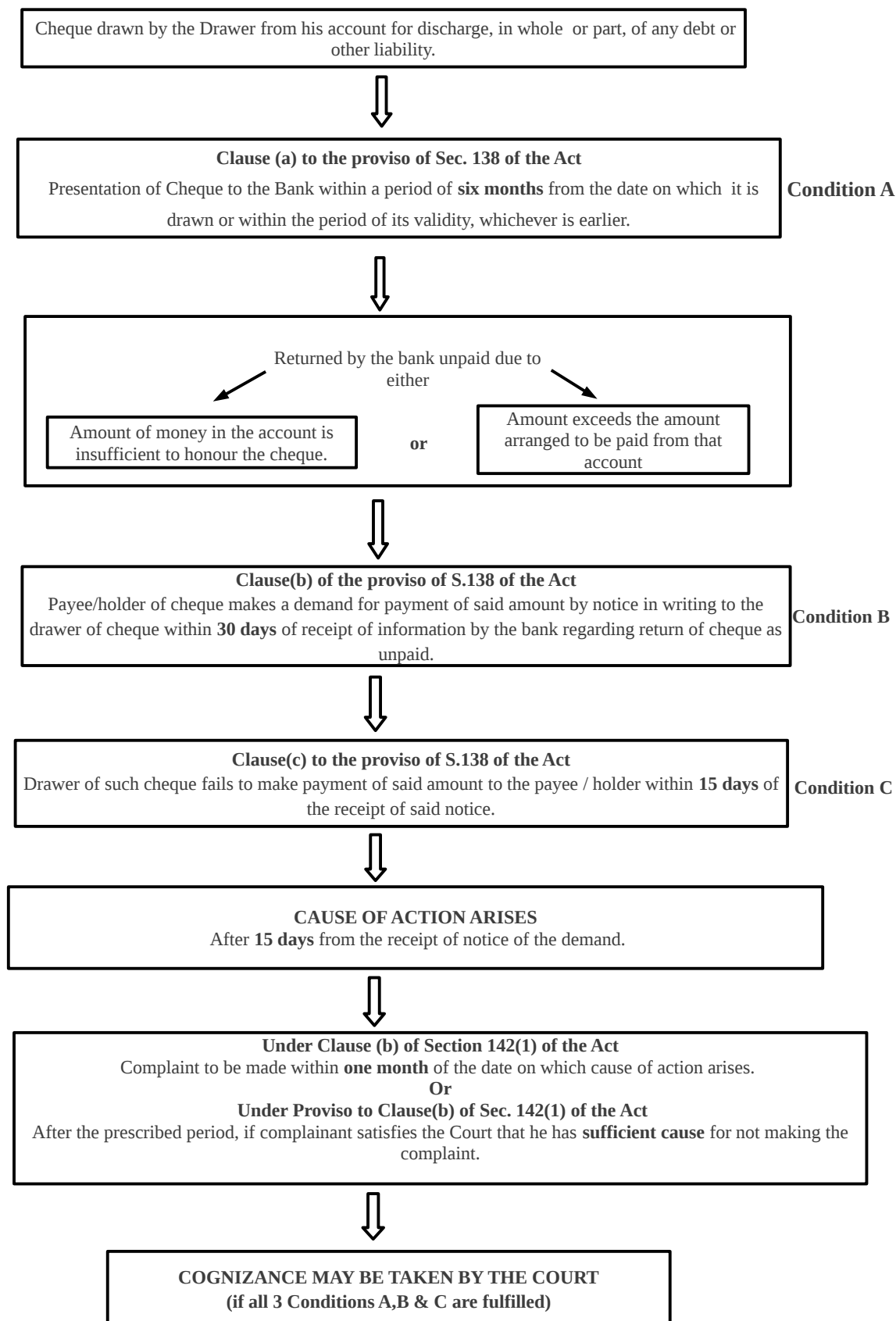
14. A conjoint reading of the aforesaid provisions would indicate that a complaint under Section 138 can be filed within one month of the date on which the cause-of-action arises under clause (c) of the proviso to Section 138, which happens as soon as the drawer of the cheque fails to make payment of the cheque amount to the payee or to the holder in due course of the cheque, within fifteen days of the receipt of the notice required to be sent in terms of clause (b) of the proviso to Section 138 of the N.I. Act.

15. The cause-of-action having once arisen, under clause (c) of the proviso to Section 138, the payee or the holder of the cheque acquires the right to institute proceedings for prosecution under Section 138 of the N.I. Act, and the said right remains legally enforceable for a period of one month from the date on which the cause-of-action has arisen.

16. The proviso to clause (b) of sub-section (1) of Section 142 empowers the court to take cognizance after expiry of the prescribed period of one month from the date of accrual of the cause-of-action, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.

17. The sequence of events starting from the dishonour of cheque for insufficiency etc. of funds in the account to the stage at which

cognizance of the offence may be taken, as contemplated under Sections 138 and 142 of the N.I. Act, may be represented as follows:



18. The ingredients of Section 138 of the N.I. Act were analyzed in the decision in **Kusum Ingots & Alloys Limited Vs. Pennar Peterson Securities Ltd.**², and it was observed that the following ingredients would be required to be satisfied for making out a case under Section 138 of the N.I. Act:

“(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

(ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.”

19. The conditions precedent to constitute an offence, as prescribed under the proviso to Section 138, were subject matter of consideration in **MSR Leathers Vs. S. Palaniappan And Another**³, wherein it was held that only upon satisfaction of all three conditions enumerated under clauses (a), (b) and (c) of the proviso to Section 138, can an offence be said to have been committed by the person issuing the cheque.

2 (2000) 2 SCC 745

3 (2013) 1 SCC 177

20. Section 142 of the N.I. Act has been considered in the decision in **Yogendra Pratap Singh Vs. Savitri Pandey And Another**⁴, and it has been held that the said section prescribes the mode and also the time within which a complaint for an offence under Section 138 of the N.I. Act can be filed.

21. In the instant case, the cheque drawn by the petitioner, was presented by the respondent no. 2, on 18.09.2019, and thereafter, on 04.01.2020 i.e. within thirty days of the receipt of the return memo dated 17.12.2019 from the bank, the respondent no. 2 (payee) of the cheque, gave notice to the petitioner and the said notice was received by him on 08.01.2020.

22. The petitioner had 15 days' period to make the payment of the said amount from the date of receipt of notice, on 08.01.2020, and the said period expired on 23.01.2020. The cause of action for filing the complaint, therefore, arose on 23.01.2020, as per clause (c) of the proviso of Section 138.

23. The complaint having been filed on 20.02.2020, was within the prescribed period of one month as per clause (b) of sub-Section (1) of Section 138, from the date on which the cause of action arose on 23.01.2020, and accordingly the court concerned would be within its right to take cognizance of the offence, as provided under Section 142.

24. The summoning order dated 02.12.2021 and the order dated 21.06.2023 passed in the revision, therefore, cannot be faulted on the ground of limitation.

4 (2014) 10 SCC 713

25. No other ground has been urged, which may persuade this Court to exercise its supervisory jurisdiction under Article 227 of the Constitution of India, in the facts of the case.

26. The petition stands **dismissed** accordingly.

Order Date :- 1.3.2024

Arun K. Singh

[Dr. Y. K. Srivastava, J.]