



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 636 OF 2006

Forbes Gokak Ltd.

Having its office at Forbes Building,
Charanjit Rai Marg, Fort, Mumbai

.... Appellant
(Orig. Complainant)

Versus

1) Brig Cargo International

2) Balasaheb G. Rakshe

Both No.1 and 2 having their office at
106, Maganlal Chambers,
Masjid Bunder (East),
Mumbai – 400 009.

(Orig. Accused Nos.1 & 2)

3) The State of Maharashtra

..... Respondents

Mr. Kiran Kulkarni, appointed Advocate for the Appellant.

Mr. Pintu Singh, appointed Advocate for Respondent Nos.1 & 2.

Mr. Yogesh Nakhwa, APP for Respondent No.3 – the State.

CORAM: SHYAM C. CHANDAK, J.

**RESERVED ON : 27th NOVEMBER, 2025
PRONOUNCED ON : 30th JANUARY, 2026**

JUDGMENT :-

. Present Appeal arises from the impugned Judgment and Order dated 13/07/2005, passed by the Ld. Special Metropolitan Magistrate, Small Causes Court at Mumbai, in C.C No.1794/SS/2005 acquitting Respondent No.1 and 2 ("A-1 and A-2") for the alleged offence punishable under Section 138 of the Negotiable Instrument Act, 1881.

2. Heard Mr. Kulkarni, the learned Counsel for Appellant, Mr. Singh, the learned counsel for both the accused and Mr. Nakhwa, the learned APP for Respondent No.3-State. Perused the record.



3. Only one question has arisen for determination in this Appeal. Because, the findings and the conclusion recorded by the trial Court that the subject matter dishonoured cheques were issued by the accused persons towards the discharge of their legal liability; that, the complainant had issued the necessary statutory notice demanding the dishonoured cheques amount; that, the accused had received that notice, however, they failed to pay the dishonoured cheques amount within the period stipulated in the notice, are not disputed and questioned by the learned counsel for A-1 and A-2. Even otherwise, the evidence on record has proved the said facts beyond a reasonable doubt. The accused failed to rebut the presumptions which can be drawn in such cases if the evidence on record is of such a standard.

4. However, according to Mr. Kulkarni, the learned counsel for the Appellant, the acquittal of the accused by the trial Court holding that the accused have not committed the offence of Section 138 of the Act and on the ground that the said case was not filed within the period of limitation as there was a delay of one day, is not lawful.

5. In this regard, Mr. Kulkarni, the learned counsel submitted that, initially, the letter-cum-notice dated 14.07.1999 (Exh.14), demanding the dishonoured cheques amount, was dispatched by hand delivery to the office of A-1 on 15.07.1999. But, the A-2 refused to accept that notice on that day. The same notice thereafter was sent on 15.07.1999 via RPAD and that notice was delivered to the accused on 16.07.1999. However, the accused failed to comply with that notice. Mr Kulkarni urged that, so, the demand letter-cum-notice (Exh.14) was legally received by the accused only on 16.07.1999. Thereafter, the 15 days notice period had expired on 31.07.1999. As such, the cause of the action had arisen on 01.08.1999 not on 31.07.1999. Thus, the limitation period was available till 01.09.1999



and accordingly, the complaint was also filed on 01.09.1999 itself. Mr Kulkarni, therefore, urged that the impugned Judgment of acquittal on the ground of limitation is unlawful.

6. In reply, Mr Singh the learned counsel appearing for the accused supported the said Judgment contending that the reasons given by the trial Court to hold that the complaint was filed one day late are correct. the complainant had never filed any application seeking condonation of said delay. A plea to condone such a delay cannot be raised for the first time in the Appeal. He, therefore, urged to dismiss the Appeal.

7. Record revealed that, the said complaint was filed with respect to four dishonored Cheques (Exhs.5 to 8) drawn in favour of the complainant for total amount of Rs.1,71,817.97/- . The Cheques were deposited for realization in the bank of the complainant on 08.07.1999 and returned dishonored on 09.07.1999. Admittedly, the demand letter-cum-notice dated 14.07.1999 (Exh.14) was sent to A-1 by hand delivery. However, its representative refused to accept that notice on 15.07.1999. An endorsement to that effect is noted on the notice (Exh.14). The same notice was again sent by RPAD on 15.07.1999. It was received by the accused on 16.07.1999. The postal receipt (Exh.15) and the letter addressed to the Post General Manager, GPO (Exh.16) confirmed the delivery. This subsequent notice was also not complied with.

8. Having taken note of the aforesaid facts and circumstances, the learned Magistrate held that the complainant was unable to produce the postal acknowledgment to support the fact that accused had received the letter-cum-notice notice subsequently sent. However, the letter (Exh.16) having an endorsement of postal department that the 'letter was delivered from Chinch Bunder on 16.07.1999', indicates that, the accused



had received the same demand letter-cum-notice (Exh.14) on 16.07.1999. Therefore, the learned Magistrate considered the decision in *M/s. SIL Import, USA Vs. Exim AIDES Silk Exporters Bangalore, reported in (1999) 4 SCC 567*, therein, it is held that "Section 142 of Negotiable Instrument Act forbids the Magistrate from taking cognizance of the offence if the complaint was not filed within one month of the date on which the cause of action arose. Completion of the offence is the immediate forerunner of rising of cause of action. Proviso (b) to Section 138 requires the payee, who receives the information regarding the return of the cheque unpaid, to make a demand for payment "by giving notice in writing to the drawer of the cheque". Nowhere it is said that such notice must be sent by registered post or that it should be dispatched through a messenger". In this reported case, the intimation of unpaid cheque was given to the appellant by fax on 11.06.1996 by the respondents and on the next day the respondent had sent the same notice by register post which was served on the appellant on 25.06.1996. On 8.08.1996 the respondent filed a complaint in respect of one of the said cheque. In the backdrop, the period of one month was reckoned from the date when the appellant had received the fax. In view thereof, the learned Magistrate of the trial Court held that the 'endorsement of refusing to accept' the demand letter-cum-notice (Exh.14), served as the required intimation to the accused on 15.07.1999 itself that the cheques returned unpaid. Therefore the learned magistrate held that the complainant Forbes will not get a benefit of the demand letter (Exh.16) to claim that the accused had received the demand notice only on 16.07.1999.

The learned Magistrate then considered the decision in case of *M/s. Saketh India Limited and others Vs. M/s. India Security Limited, reported in AIR 1999 SC 1090*. Therein, it is held that "Ordinarily in



computing the time the rule observed is to exclude the first date 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 date on which the period of 15 days from the date of the receipt of the notice by the drawer expires." Therefore, in the case in hand the learned Magistrate held that the 15 days period had expired on 30.07.1999. The one month period had expired on 30.08.1999. The present complaint, therefore, ought to have been filed on or before 30.08.1999. However, the complaint was filed on 01.09.1999. As such, in view of the decision in SIL Import (Supra) and as per Section 142 (b) of N.I. Act, the Court cannot take cognizance of a case which is filed beyond period of one month. In the wake of above, the learned Magistrate held that there was a delay of one day in filing the complaint, therefore, dismissed the complaint on the ground of said delay.

9. On considering the evidence of record, the aforesaid findings and conclusion recorded by the trial Court is proper and in accordance with law. Because, on expiry of the notice period on 30.07.1999, the cause of action had arisen on 31.07.1999, which day was required to be excluded. Thereafter, the limitation to file the complaint was available from 01.08.1999 to 30.08.1999. However, instead of filing the complaint on 30th day of the August, it was filed on 01.09.1999. Therefore, there was a delay of one day in filing the complaint. No application seeking to condone the said delay was filed till the impugned Judgment was passed. As such, dismissal of the complaint on that account by the trial Court is lawful.

10. In a recent case, *H.S. Oberoi Buildtech (P) Ltd. and others Vs. M/s. MSN Woodtech, 2025 SCC OnLine SC 2906*, there was a delay of five days in filing the case under Section 138 of the Act. However, the



trial Court held that the case was filed within limitation and issued the summons to the Appellant. An application seeking condonation of the delay was not filed. However, the said Order summoning the Appellant was upheld by the High Court. In the wake of above, in paragraph 6, the Hon'ble Supreme Court observed and held that, "Having considered the matter, we are of the opinion that the order taking cognizance and issuing summons needs interference. From a purely legal point of view where facts are admitted that the complaint was filed beyond the time prescribed under the statute, there cannot be an automatic or presumed condonation. In the present case, the respondent is on a weaker wicket for the reason, that the Trial Court proceeds on an erroneous presumption and notes that the complaint was filed within the limitation period. Even for the sake of argument, if it is assumed that the power under Section 142 of the Act exists for the Court to condone delay, the first requirement is that the Court has to take note of the fact that there is a delay and thereafter it had to go on the point whether the reasons which have been furnished by the complainant are sufficient to condone such delay and only then move on to take cognizance and proceed for issuing of summons." Hence, in paragraph 8, the Apex Court held that, "Once the statute prescribes a mandatory time limit for filing a complaint, there cannot be any deviation from the same except when an application accompanying the complaint is filed seeking condonation disclosing reasons for the delay and even then it is obligatory on the part of the Court to take note of such filing beyond limitation and to consider the reasons disclosed independently and to come to a judicious conclusion that in the facts and circumstances of that case condonation is justified. The same not having been done, the order cannot be sustained." Therefore, the said order issuing the summons to the Appellant was set aside and the complaint was quashed.



11. In the case in hand, admittedly, no application seeking condonation of the one day delay was filed by the Complainant. Therefore, the decision in *H.S. Oberoi Buildtech* (Supra) is clearly applicable here. In view thereof, I am of the view that the impugned Judgment and Order does not suffer from infirmity so as to interfere with the same. As a result, the Appeal fails and liable to be dismissed. Hence, following Order is passed.

12. Appeal is dismissed, accordingly.

12.1 R & P be returned to the trial Court.

13. Before parting with the Judgment, I would like to place on record appreciation for efforts put in by Mr. Kulkarni and Mr. Singh, both learned Advocates appointed by High Court Legal Services Committee, Mumbai for espousing the cause of Appellant and Respondent Nos.1 and 2 respectively, they were thoroughly prepared in the matter and rendered proper and able assistance to the Court.

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(SHYAM C. CHANDAK, J.)