

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 605 OF 2012

YOGENDRA PRATAP SINGH

Appellant(s)

VERSUS

SAVITRI PANDEY & ANR

Respondent(s)

WITH

CRIMINAL APPEAL NO. 1925/2014

AND

CRIMINAL APPEAL NO. 1924/2014

O R D E R

CRIMINAL APPEAL NO. 605 OF 2012

A complaint under Section 138 of the Negotiable Instruments Act (for short "the Act") filed by the complainant/appellant in this appeal was dismissed by the High Court on the ground that the same had been filed within the statutory period of 15 days from the date of service of the notice under Section 138 of the Act aforementioned.

When this appeal assailing the dismissal order came up for hearing before a two-Judge Bench of this Court, the same was referred to a larger Bench to resolve the cleavage in the judicial opinion arising out of two decisions of this Court and several other decisions rendered by different High Courts in the country taking diametrically opposite views on the question whether a

complaint filed within 15 days of the service of the notice can be maintained by the complainant. The larger Bench, speaking through, Hon'ble R.M. Lodha, CJI, as His Lordship then was, held that a complaint under Section 138 of the Act filed before expiry of the period of 15 days from the date of service of the statutory notice is premature hence liable to be dismissed. The Court further held that the only option available to the complainant in such a case is to file a fresh complaint before the competent court and to seek condonation of delay in terms of the proviso to Section 142(b) of the Act. Not only that the Court went a step further and condoned the delay in the filing of any such fresh complaint in the case at hand if the same is presented within a period of 30 days from the date on which the appeal is finally disposed of by this Court.

Learned counsel for the parties submit that in the light of the order passed by the larger Bench nothing survives for consideration in this appeal except to declare that the order passed by the High Court holding the complaint to be premature is legally sound and to permit the complainant/appellant herein to file a fresh complaint within a period of 30 days from that date of this order in which event the complaint shall be deemed to have been filed within time.

We, accordingly, dismiss this appeal but permit the complainant/appellant herein to file a fresh complaint on the basis of the notice already issued by him within a period of 30 days from today. In case a fresh complaint is indeed filed within

30 days from today, the same shall be treated to have been filed within the time stipulated and disposed of accordingly. No costs.

CRIMINAL APPEAL NOS. 1925 and 1924 of 2014

Relying upon the decision of this Court in *Narsing Das Tapadia vs. Goverdhan Das Partani and Anr.* 2000 SCC Cr1. 1326, the High Court of Madras has, by its order dated 26.04.2012, held the complaint filed by the respondent-Company under Section 138 of the Act to be maintainable, even though the same had been filed before the expiry of the period of 15 days from the date of service of the statutory notice. A two-Judge Bench of this Court had noticing a conflict in the decisions of this Court in *Narsing Das* (supra) and that in *Sarav Investment & Financial Consultancy Pvt. Ltd. & Anr. vs. Llyods Register of Shipping Indian Office Staff Provident Fund & Anr.*, (2007) 14 SCC 753, referred the matter to a larger Bench to resolve the issue. The larger Bench has by its judgment dated 19.09.2014 reversed the view taken in *Narsing Das* (supra) while affirmed that taken in *Sarav's case* (supra).

In the face of the decision rendered by the larger Bench the complaint filed within a period of 15 days from the date of service of the statutory notice has to be held to be premature hence liable to be dismissed. The larger Bench has also held that the complainant in such cases can file a fresh complaint and seek condonation of delay under the proviso to Section 142(b) of the Act. In the case at hand, the larger Bench has, in fact, condoned the delay if a fresh complaint is indeed filed within a period of one month from the date of the dismissal of the earlier complaint.

In the circumstances, therefore, and in the light of the view taken by the larger Bench, we have no hesitation in setting aside the order passed by the High Court and holding the complaint filed by the respondent/complainant to be premature. The said complaint shall accordingly stand dismissed. Even so we permit the respondent/complainant to file a fresh complaint within a period of one month from today. If a fresh complaint is indeed filed within the time allowed the magistrate concerned shall entertain and deal with the same as if it had been filed within the time stipulated and decide the matter on merits and in accordance with law.

The appeals are accordingly disposed of with the above directions.

..... J.
(T.S. THAKUR)

..... J.
(ADARSH KUMAR GOEL)

..... J.
(R. BANUMATHI)

New Delhi;
October 16, 2014.

ITEM NO.103

COURT NO.2

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 605/2012

YOGENDRA PRATAP SINGH

Appellant(s)

VERSUS

SAVITRI PANDEY & ANR

Respondent(s)

WITH

Crl.A. No. 1925/2014

(With appln.(s) for stay and Office Report)

Crl.A. No. 1924/2014

(With Office Report)

Date : 16/10/2014 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s) Mr. Shakil Ahmed Syed, Adv.
 Md. Parvez Dabas, Adv.
 Mr. Uzmi Jameel Husain, Adv.
 Mr. Milan Laskar, Adv.

Mr. Ugra Shankar Prasad, Adv.

Mr. Jayanth Muth Raj, Adv.
Mrs. Malavika J. Adv.
Mr. Sureshan P., Adv.

For Respondent(s) Dr. J.N. Dubey, Sr. Adv.
 Mr. Anurag Dubey, Adv.
 Ms. Anu Sawhney, Adv.
 Mr. Meenesh Dubey, Adv.
 Mr. S. R. Setia, Adv.

Mr. Subhasish Bhowmick, Adv.

Mr. Nitin S. Tambwekar, Adv.
Mr. K. Rajeev, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Criminal Appeal No. 605 of 2012

We, accordingly, dismiss this appeal but permit the complainant/appellant herein to file a fresh complaint on the basis of the notice already issued by him within a period of 30 days from today. In case a fresh complaint is indeed filed within 30 days from today, the same shall be treated to have been filed within the time stipulated and disposed of accordingly. No costs.

Criminal Appeal Nos. 1925 and 1924 of 2014

The appeals are accordingly disposed of with the above directions.

(R.NATARAJAN)
Court Master

(VEENA KHERA)
Court Master

(Signed order is placed on the file)