

respondent No.2-State of West Bengal. A copy of Process Server's report dated 2nd June, 2009 is also on record from which it appears that inspite of process server's attempt to serve respondent No.1, he chose not to accept service.

This appeal is directed against the judgment and order dated 6th September, 2006, passed by the learned Single Judge of the Calcutta High Court in C.R.R.No.1279 of 2004. By virtue of the said order, the learned Judge quashed the complaint filed by the appellant herein in the Court of learned Judicial Magistrate 1st Court, Sealdah, and discharged the accused.

Appearing on behalf of the appellant, learned counsel submitted that when cognizance was taken by the learned Additional Chief Judicial Magistrate, Sealdah, South Parganas, on 29th July, 2003, there was no compliance of

-2-

provisions of Section 200 Cr.P.C. Subsequently, when the matter was transferred to the learned Chief Judicial Magistrate, 1st Court, Sealdah for disposal, the said lacuna was sought to be filled up by examination of the appellant under Section 200 Cr.P.C. and process was issued, but, since the complaint was barred under Section 138 of the Negotiable Instruments Act, 1881, by a period of 10 days and an application for condonation of such delay had been filed, the same had been taken into consideration while issuing process.

Mr.Tara Chandra Sharma, learned counsel appearing on behalf of the State of West Bengal, has endorsed the submissions made on behalf of the appellant.

The amended provisions of Section 142(b) of the Negotiable Instruments Act, 1881 provides that the complaint

is to be filed within one month of the date on which the cause of action arises.

In the instant case, the complaint was

barred by ten days.

Questioning the cognizance taken by the

learned Chief Judicial Magistrate, respondent No.1/accused

filed an application before the learned Magistrate

dropping the proceedings in view of the fact that

the complaint was barred by limitation when the cognizance was

taken. The said application was dismissed. No.1 had moved the High Court in revision.

The respondent
As indicated

hereinabove, the High Court quashed the entire complaint on the ground that when the cognizance was taken, the complaint was barred by limitation and that there was no application for condonation of delay pending before the learned Additional

-3-

Chief Judicial Magistrate under Section 142(b) of the Negotiable Instruments Act, 1881. As will be evident from the

order of the High Court, the learned Judge was referring to

the cognizance taken initially by the Additional Chief Judicial Magistrate, Sealdah on 29th July, 2003, when

admittedly no application under the provisions of Section 142

was pending. However, subsequently, when the Chief Judicial

Magistrate 1st Court, Sealdah, took cognizance once again, such

an application had been made and was pending and, according to

the appellant, was taken into consideration and impliedly was

allowed by the issuance of process. Even if he is aggrieved

with the reasoning of the learned Single Judge of the High

Court that the cognizance taken by the Additional Chief

Judicial Magistrate, Sealdah, on 29th July, 2003 was barred,

when process was issued by the Chief Judicial Magistrate 1st

Court, Sealdah, on 3rd September, 2003, an application had

already been made under the provisions of Section 142 (b) for

condoning the delay of ten days in making the complaint. The

order dated 3rd September, 2003 does not reflect whether the

said application was allowed or not, but the learned Single Judge of the High Court appears to have taken into consideration only the initial order passed by the Additional Chief Judicial Magistrate dated 29th July, 2003 without taking into consideration the subsequent order passed by the Chief Judicial Magistrate 1st Court, Sealdah on 3rd September, 2003.

For the sake of reference, the provisions of Section 142 are set out herein-below:

-4-

"142. Cognizance of offences - 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 satisfied 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 an offence punishable under section 138."

Having regard to the aforesaid provisions and having further regard to the fact that the application was pending before the learned chief Judicial Magistrate 1st Court, Sealdah, on 3rd September, 2003, in our view, the High Court ought not to have quashed the entire complaint and discharge the respondent No.1 but should have quashed the cognizance taken and sent the matter back to the learned Magistrate for taking into consideration the application which had been filed by the appellant under the aforesaid provisions of the Negotiable Instruments Act, 1881.

We, accordingly, allow the appeal and set aside the judgment and order of the High Court so far as the quashing

of the entire complaint and discharge of the accused.
order of the High Court is, accordingly, modified to the

The

-5-

extent that the matter be remanded to the 1st Judicial
Magistrate, Sealdah, for taking fresh cognizance after taking
into consideration the application filed by the appellant
under proviso to Section 142(b) of the Negotiable Instruments
Act, 1881.

The appeal is allowed to the aforesaid extent.

.....J.
(ALTAMAS KABIR)

.....J.
(SWATANTER KUMAR)

New Delhi,
January 08, 2010.