

CRL REV P. No. 08/2015

RADHEY SHYAM SWAMI	VERSUS	REVISIONIST (S)
JAGAT SINGH SINGHI & ANR.		RESPONDENT (S)

For Revisionist	:	Mr. Venkita Subramoniam T.R., Advocate Mr. Pem Tshering Lepcha, Advocate
For Respondent No.1	:	Mr. Jorgay Namka, Advocate
For Respondent No.2	:	Mr. Sujan Sunwar, Asst. Public Prosecutor.

WITH

CRL REV P. No. 01/2016

JAGAT SINGH SINGHI	VERSUS	REVISIONIST (S)
RADHEY SHYAM SWAMI & ANR.		RESPONDENT (S)

For Revisionist	:	Mr. Jorgay Namka, Advocate
For Respondent No.1	:	Mr. Venkita Subramoniam T.R., Advocate Mr. Pem Tshering Lepcha, Advocate
For Respondent No.2	:	Mr. Sujan Sunwar, Asst. Public Prosecutor.

Date: 01/07/2021

CORAM :

HON'BLE MR. JUSTICE JITENDRA KUMAR MAHESHWARI, CJ.

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ORDER (O R A L)

Criminal Revision Petition No. 08/2015 has been filed arising out of Judgment dated 27.06.2015 passed in Criminal Appeal No.05/2013 by the Sessions Judge, Special Division-II, East Sikkim, Gangtok confirming the judgment dated 24.06.2008 and order of sentence dated 25.06.2008 passed by the Judicial Magistrate, East Sikkim, Gangtok convicting the petitioner of the case, Radhey Shyam Swami in Private Complaint Case No. 18/2006.

2. Criminal Revision Petition No. 01/2016 has been filed by the complainant Jagat Singh Singhi arising out of the same judgment and sentence seeking enhancement of the sentence.

3. In the present case, the arguments are heard at length of learned Counsel representing the parties. But on the point regarding Section 138 (b) and (c) read with Section 142 (1) (a) (b) (c) of the Negotiable Instruments Act, 1881 (for short, "the NI Act"), it is contended by the Counsel for the accused/applicant that the cheque was issued on 19.08.2005 as alleged and the same was presented on 20.11.2005 to the bank, which was dishonored on 24.11.2005. The first notice was issued on 28.11.2005, Exhibit P-5, which was returned with a note that the accused is not available to receive. The said endorsement is of 09.12.2005. Making a pleading to that effect and on receiving with the said note on 15.12.2005, a fresh notice was issued on 17.12.2005 which was received on 14.01.2006 with a note of refusal to accept, however, the present complaint has been filed on 01.02.2006 which is time barred.

4. It is contended by the applicant/accused that if they failed to make the payment of amount of money to the payee who the holder of the cheque in due course within 15 days of receipt of the notice the complaint must be filed as per Section 142 (1) (b) of the NI Act within a period of one month on the date of the cause of action arises under clause (c) to proviso of Section 138 of the NI Act otherwise taking of cognizance by the Court is barred. Reliance has been placed on the judgment of Hon'ble Supreme Court in the case of ***N. Parameswaran Unni Vs G. Kannan and Anr.*** reported in ***(2017) 5 SCC 737***.

5. On the other hand learned Counsel representing the complainant contends that as per the proviso of Section 142 (1) (b) of N.I Act, the cognizance of a complaint may be taken even after the prescribed period under clause (c) of Section 138 of the NI Act if sufficient cause for

not making the complaint with such period be specified. Therefore, the cognizance can be taken even after expiry of the period from the date of arising of cause of action. On this point evidence of the parties has not been brought, therefore, in place of directly dealing the issue looking to the proviso an opportunity must be given to the parties.

6. During hearing both the learned counsel have conceded that on the said issue parties may be given liberty to lead the evidence afresh and the judgment so passed by the Trial Court and Appellate Court may be set aside because it do not deal with the contingency of issuance of the first notice would be a cause of action in the light of judgment of the Hon'ble Supreme Court in the case of **MSR Leathers vs. S. Palaniappan & Anr.** reported in **2013 CRI. L.J. 1112.**

7. Considering the submissions so made by counsel for both the parties by their consent, the case is remitted back setting aside the impugned judgment dated 24.06.2008 and order on sentence 25.06.2008 passed by the Trial Court and the judgment dated 27.06.2015 passed by the Appellate Court.

8. Accordingly, both the Revision Petitions are disposed of with a direction that the learned Trial Court shall record the evidence on the point that cause of action would arise from the first notice or from the second notice and decide the said issues in accordance with law. It is made clear that learned counsel for the parties are not entitled to lead the evidence on other issues and the Trial Court shall decide the other issues afresh on the basis of evidence already adduced by the parties.

9. In view of the foregoing observation both these Revision Petitions are disposed of. Private Complaint No. 18/2006 be restored to its original file before the Trial Court and the said complaint be decided within a period of three months from the date of appearance of the parties.

10. Parties present in the Court are agreed to appear before the Trial Court on virtual mode on 16.08.2021.

Chief Justice

jk/avi