

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 6460 OF 2024

VAIBHAV
RAMESH
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Jayant Shivpal Banchhode

Age-48 Yrs, Occu-Business, R/o-559,
E-Ward, Vyapari Peth,
Shahupuri, Kolhapur

... Petitioner

Versus.

- 1) Chintamani Dairy & Breeding Farm
Pvt. Ltd.

Reg. Office B-1/A-1/304,
Kumar Prassann, S. No. 44/2-A/3-A
Wanwadi, Pune-411040

- 2) Balasaheb Babanrao Nagavade

Age-50 yrs, Occu-Business,
R/o-Reg. Office B-1/A-1/304,
Kumar Prassann, S. No.44/2-A/3-A
Wanwadi, Pune-411040

- 3) Vaishali Balasaheb Nagavade

Age-45 yrs. Occu-Business,
R/o- Plot No. 304, Kumar Prassann,
Fatima Nagar, Wanwadi, Pune-411040

- 4) The State of Maharashtra

... Respondents

Mr. Anand S. Patil (through V.C.) with Mr. Soham Powar, Mr. Pratik B. B. for the Petitioner.

Mr. Jayant J. Bardeskar with Mr. Nakul V. Shukla for the Respondent Nos.1, 2 and 3.

Dr. A. A. Takalkar, APP for Respondent No.4-State.

CORAM : ASHWIN D. BHOBE, J.

DATED : OCTOBER 17, 2026

ORAL JUDGMENT:

1. Heard, Mr. Anand S. Patil, learned Advocate for the Petitioner, Mr. Jayant J. Bardeskar, learned Advocate for Respondent Nos. 1, 2 and 3 and Dr. A. A. Takalkar, learned APP for Respondent No. 4-State.

2. Rule. Rule made returnable forthwith and with the consent of the parties, heard finally.

3. By this Petition filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, the Petitioner assails the Judgment and Order dated 18th July 2023 passed by the Additional Sessions Judge, Kolhapur ("Revisional Court"), in Criminal Revision Application No. 30 of 2023, by which the Revisional Court has maintained the Order dated 23rd December 2022 passed by the Chief Judicial Magistrate, Kolhapur ("Magistrate"), in Criminal Case No. 445 of 2015, by which the application dated 10th November 2021 filed by Respondent Nos. 1

and 2 under Section 245 of the Code of Criminal Procedure, 1973, was allowed. Consequently, the Court discharged Respondent Nos. 1 and 2 from Regular Criminal Case No. 445 of 2015.

4. The material facts relevant to the decision of this Petition are that the Petitioner (Complainant) filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, read with Sections 420, 504 and 506, read with Section 34 of the Indian Penal Code, 1860, against Respondent Nos. 1, 2 and 3 (Accused Nos. 1, 2 and 3) before the Magistrate, which was registered as Regular Criminal Case No. 445 of 2015.

5. By Order dated 12th August 2015, the Magistrate issued process against Respondent Nos. 1, 2 and 3 under Section 138 of the Negotiable Instruments Act, 1881 and under Section 420 read with Section 34 of the Indian Penal Code, 1860.

6. Respondent Nos. 1 and 2 filed an Application dated 10th November 2021, under Section 245 of the Code of Criminal Procedure, 1973, before the Magistrate in Regular Criminal Case No. 445 of 2015, which was marked as Exhibit 72.

7. The Magistrate, by Order dated 23rd December 2022, allowed the Application at Exhibit 72 and discharged Respondent Nos. 1 and 2 of the offences punishable under Section 420 of the Indian Penal Code, 1860 and

Section 138 of the Negotiable Instruments Act, 1881.

8. Dissatisfied with the Order dated 23rd December 2022 passed by the Magistrate, the Petitioner filed Criminal Revision Application No. 30 of 2023 before the Revisional Court.

9. By Judgment and Order dated 18th July 2023, the Revisional Court dismissed Criminal Revision Application No. 30 of 2023 by maintaining the Order dated 23rd December 2022 passed by the Magistrate on Exhibit 72 (“impugned Judgment”).

10. Aggrieved by the impugned Judgment, the Petitioner is before this Court.

11. On 12th October 2026, Mr. Anand S. Patil, learned Advocate for the Petitioner, made the following submissions, recorded in paragraphs 3 and 4 of the order dated 12th October 2026:

“3. Mr. Anand S. Patil, learned Advocate for the Petitioner, submits that the Petitioner challenges the order dated 23rd December, 2022, passed by the Trial Court on Exhibits 1 and 72 in Regular Criminal Case No.445 of 2015 as confirmed by the Revisional Court in Criminal Revision Application No.30 of 2023, to the limited extent of discharging Accused Nos.1 and 2 of the offence punishable under Section 138 of the NI Act. He clarifies that the Petitioner gives up the challenge to the discharge of Accused Nos.1 and 2 in respect of the offence punishable under Section 420 of the IPC.

4. Mr. Anand S. Patil, learned Advocate for the Petitioners, and Mr. Jayant J. Bardeskar, learned Advocate for Respondent Nos.2 and 3, have addressed this Court on the issue of discharge of the accused Nos.1 and 2 in respect of the offence punishable under Section 138 of the NI Act.”

12. The Magistrate dismissed Regular Criminal Case No. 445 of 2015, holding it barred by limitation under Section 138 of the Negotiable Instruments Act, 1881. The Revisional Court in Criminal Revision Application No. 30 of 2023 upheld the Magistrate's finding.

13. The Petitioner confined his challenge to the impugned Judgment in the context of the dismissal of Regular Criminal Case No. 445 of 2015, relating to the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Mr. Anand S. Patil, learned Advocate for the Petitioner and Mr. Jayant J. Bardeskar, learned Advocate for Respondent Nos. 1 to 3, addressed this Court on the said issue.

14. Mr. Anand S. Patil, learned Advocate for the Petitioner, submits that the Magistrate and the Revisional Court, by misinterpreting the 30-day period required to be computed under Section 138(b) of the Negotiable Instruments Act, 1881, wrongly held that the complaint registered as Regular Criminal Case No. 445 of 2015 was beyond the 30-day period and therefore, erroneously passed impugned Judgment.

15. Mr. Anand S. Patil, learned Advocate for the Petitioner, submits that the complaint was well within the 30-day period from the accrual of the cause of action and is therefore maintainable and required to be decided on merits.

16. Mr. Jayant J. Bardeskar, learned Advocate for Respondent Nos. 1, 2 and

3, opposes the said contention of the Petitioner and submits that the complaint filed by the Petitioner was beyond the 30-day period and in fact, was filed on the 31st day and therefore was not maintainable. He submits that the Petitioner did not file an application seeking condonation of delay, therefore, no indulgence is warranted in the Petition. He submits that the Magistrate and the Revisional Court have duly considered all aspects of the matter and found no substance in the Petitioner's case. He therefore requests dismissal of this Petition.

17. Mr. Jayant J. Bardeskar, learned Advocate for Respondent Nos. 1 to 3, relies on the decisions of the Hon'ble Supreme Court in *H.S. Oberoi Buildtech Pvt. Ltd. & Ors. v. MSN Woodtech*¹ (paragraphs 4, 7 and 10) and in *Econ Antri Limited v. Rom Industries Limited & Anr.*² (paragraphs 38 and 39).

18. Paragraphs Nos. 4, 7 and 10 of *H.S. Oberoi Buildtech Pvt. Ltd. (supra)* read as follows:

“4. Learned counsel for the appellants submitted that the simple point to be considered in the present case is whether the Trial Court could have issued summons when admittedly the petition under the Act was filed five days beyond the maximum period of 30 days from the cause of action. It was submitted that the Trial Court, in fact, has gone totally beyond the records and has categorically stated in the order issuing summons that the petition filed by the respondent was within the limitation period. Learned counsel submitted that though there is power to condone the delay under proviso to Section 142 of the Act, but the same has to be exercised

1 2025 SCC OnLine SC 2906

2 (2014) 11 SCC 769

only upon a proper application/affidavit filed by the complainant disclosing reasons for such delay.

7. In the present case, the same has absolutely not been done. The High Court opining that though there may have been delay but still the Trial Court is well within its power to condone the delay and in terms of Section 142(b) of the Act, filing of an application for condonation of delay is not a statutory mandate, again in our considered view, is erroneous.

10. After the order was dictated, we have been informed that the civil proceedings for recovery of the amount have been instituted by the respondent. We would only observe that the same will not be prejudiced in any manner by the present order.”

19. Paragraph Nos. 38 and 39 of *Econ Antri Limited (supra)* read as follows:-

“38. In the circumstances, it was held in Vasantlal Ranchhoddas Patel case [Vasantlal Ranchhoddas Patel v. Union of India, AIR 1967 Bom 138] that the day on which the goods were seized has to be excluded in computing the period of limitation contemplated under sub-section (2) of Section 110 and therefore the notice was issued within the period of limitation. It is pertinent to note that under Section 110(2) of the Customs Act, notice had to be given within six months of the seizure of the goods. Similarly, under Section 142(b) of the NI Act, the complaint has to be made within one month of the date on which cause of action arose. The view taken in Vasantlal Ranchhoddas Patel [Vasantlal Ranchhoddas Patel v. Union of India, AIR 1967 Bom 138] meets with our approval.

39. In view of the above, it is not possible to hold that the word “of” occurring in Sections 138(c) and 142(b) of the NI Act is to be interpreted differently as against the word “from” occurring in Section 138(a) of the NI Act; and that for the purposes of Section 142(b), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting day on which the cause of action arises should be included for computing the period of 30 days. As held in *Fallon, ex p* [(1793) 5 TR 283 : 101 ER 159] the words “of”, “from” and “after” may, in a given case, mean really the same thing. As stated in *Stroud's Judicial Dictionary*, Vol. 3, 1953 Edn., Note (5), the word “of” is sometimes equivalent of “after”.

20. From the contested submissions made by Mr. Anand S. Patil, learned Advocate for the Petitioner and Mr. Jayant J. Bardeskar, learned Advocate for

Respondent Nos. 1 to 3, the point for determination in the present Petition is whether the complaint filed by the Petitioner under Section 138 of the Negotiable Instruments Act, 1881, was within the period of limitation.

21. Perused the records with the assistance of the learned Advocates.

22. Since the issue in this Petition is confined to whether the complaint registered as Regular Criminal Case No. 445 of 2015 was filed within the 30-day period contemplated under Section 138(b) of the Negotiable Instruments Act, 1881, the following facts are relevant:-

- i.** The cheque in question, bearing No. 000047, is dated 9th February 2015 and the amount mentioned is Rs. 25,00,000/- payable to the Petitioner (“said Cheque”);
- ii.** The said Cheque was presented for payment on 10th March 2015 and returned dishonoured on the same day, i.e. 10th March 2015.
- iii.** The Petitioner issued a demand notice under Section 138(b) of the Negotiable Instruments Act, 1881, on 12th March 2015, which was served on Respondent Nos. 1, 2 and 3 on 14th March 2015.
- iv.** The complaint was presented to the Magistrate on 30th April 2015.

These facts, as stated in the Regular Criminal Case No. 445 of 2015,

are neither disputed nor contested by Mr. Jayant J. Bardeskar, learned Advocate for Respondent Nos. 1 to 3.

23. Given the above facts, the question now is how to compute the 30-day period under Section 138(b) of the Negotiable Instruments Act, 1881 for filing the complaint.

24. According to Mr. Anand S. Patil, learned Advocate for the Petitioner, the 15-day period from the service of the demand notice expired on 29th March 2015 and the cause of action for the Petitioner to institute a complaint would commence on 30th March 2015. Thus, according to Mr. Anand S. Patil, learned Advocate for the Petitioner, the complaint filed on 30th April 2015 is within the period of limitation.

25. According to Mr. Jayant J. Bardeskar, learned Advocate for Respondent Nos. 1 to 3, although he does not dispute that the 15-day period after service of notice would expire on 29th March 2015 and that the cause of action for filing the complaint would commence on 30th March 2015, he submits that the 30-day period would expire on 29th April 2015 and therefore, the complaint is beyond the period of limitation by one day.

26. Section 3(35) of the General Clauses Act, 1897 reads thus:

“3. **Definitions**

(1) to (34) ...

(35) “month” shall mean a month reckoned according to the British calendar;”

27. Section 12(1) of the Limitation Act, 1963 reads thus:

“12. Exclusion of time in legal proceedings

(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.”

28. The Hon'ble Supreme Court in the case of *Saketh India Limited and Others v. India Securities Limited*³, in paragraphs has held as follows:

“7. The aforesaid principle of excluding the day from which the period is to be reckoned is incorporated in Section 12(1) and (2) of the Limitation Act, 1963. Section 12(1) specifically provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. Similar provision is made in sub-section (2) for appeal, revision or review. The same principle is also incorporated in Section 9 of the General Clauses Act, 1897 which, inter alia, provides that in any Central Act made after the commencement of the General Clauses Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word “from” and for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

8. Hence, there is no reason for not adopting the rule enunciated in the aforesaid case which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act. Ordinarily in computing the time, the rule observed is to exclude the first day 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 day on which the period of 15 days from the date of the receipt of the notice by the drawer expires. The period of 15 days in the present case expired on 14-10-1995. So cause of action for filing complaint would arise from 15-10-1995. That day (15th October) is to be excluded for counting the period of one month. Complaint is filed on 15-11-1995. The result would be that the complaint filed on 15th November is within time.”

3 (1999) 3 SCC 1

29. The High Court of Madras, in the case of *K.K.C. Textile Mills and Another v. Maize Products*⁴, has observed as follows:

“... The next contention raised by counsel for the petitioners is that the complaint was not filed within a month from the date of expiry of 15 days, the time given for payment and as such, the complaint has to be dismissed, on the ground that it was filed beyond the period of limitation.

According to the petitioners, they received the notice on December 27, 1993, and the 15th day expires on January 11, 1994. So the cause of action arises on January 12, 1994. According to counsel for the petitioners, the term “one month” means 30 days and, therefore, the 30th day falls on February 10, 1994, and so, on or before February 10, 1994, the complaint ought to have been filed. But, in the instant case, the complaint was filed only on the 31st day, i.e., on February 11, 1994.

Arguing contra, counsel for the respondent/complainant would submit that one month means an English calendar month. Therefore, “one month” in this case expires on February 11, 1994, since the cause of action arose on January 12, 1994. Therefore, the complaint was filed within the period of limitation. ...”

30. The Hon'ble Supreme Court in *State of Himachal Pradesh & Anr. v. Himachal Techno Engineers & Anr.*⁵ considered the calculation of the limitation period under Section 34(3) of the Arbitration and Conciliation Act, 1996. Paragraphs 6, 14 to 18 read thus:

“6. This leads us to the question whether the petition was filed beyond three months plus thirty days. There is no dispute that if the petition had been filed within a period of three months plus thirty days, the delay has to be condoned as sufficient cause was shown by the appellant for condonation of the delay. But the High Court has accepted the contention of the respondent that the period of three months plus thirty days expired on 10-3-2008 and, therefore, the petition filed on 11-3-2008 was barred. Therefore, the following questions arise for our consideration:

4 1997 SCC online mad 933

5 (2010) 12 SCC 210

- (i) What is the date of commencement of limitation?
- (ii) Whether the period of three months can be counted as 90 days?
- (iii) Whether only three months plus twenty-eight days had expired when the petition was filed as contended by the appellant, or whether petition was filed beyond three months plus thirty days, as contended by the respondent?

Re : Question (ii)

14. The High Court has held that “three months” mentioned in Section 34(3) of the Act refers to a period of 90 days. This is erroneous. A “month” does not refer to a period of thirty days, but refers to the actual period of a calendar month. If the month is April, June, September or November, the period of the month will be thirty days. If the month is January, March, May, July, August, October or December, the period of the month will be thirty-one days. If the month is February, the period will be twenty-nine days or twenty-eight days depending upon whether it is a leap year or not.

15. Sub-section (3) of Section 34 of the Act and the proviso thereto significantly, do not express the periods of time mentioned therein in the same units. Sub-section (3) uses the words “three months” while prescribing the period of limitation and the proviso uses the words “thirty days” while referring to the outside limit of condonable delay. The legislature had the choice of describing the periods of time in the same units, that is, to describe the periods as “three months” and “one month” respectively or by describing the periods as “ninety days” and “thirty days” respectively. It did not do so. Therefore, the legislature did not intend that the period of three months used in sub-section (3) to be equated to 90 days, nor intended that the period of thirty days to be taken as one month.

16. Section 3(35) of the General Clauses Act, 1897 defines a “month” as meaning a month reckoned according to the British calendar.

17. In *Dodds v. Walker* [(1981) 1 WLR 1027 : (1981) 2 All ER 609 (HL)] the House of Lords held that in calculating the period of a month or a specified number of months that had elapsed after the occurrence of a specified event, such as the giving of a notice, the general rule is that the period ends on the corresponding date in the appropriate subsequent month irrespective of whether some months are longer than others. To the same effect is the decision of this Court in *Bibi Salma Khatoon v. State of Bihar* [(2001) 7 SCC 197] .

18. Therefore when the period prescribed is three months (as contrasted from 90 days) from a specified date, the said period would expire in the third month on the date corresponding to the date upon which the period starts. As a result, depending upon the months, it may mean 90 days or 91 days or 92 days or 89 days.”

31. The contested issue in this Petition regarding the computation of the period of limitation has been answered by the Hon'ble Supreme Court in *State of Himachal Pradesh (supra)* and considered by the High Court of Madras in *K.K.C. Textile Mills (supra)*.

32. Thus, in the facts of the case, guided by the law laid down by the Hon'ble Supreme Court, the 30-day period for filing the Regular Criminal Case No. 445 of 2015 would expire on 30th April 2015, as submitted by Mr Anand S. Patil, learned Advocate for the Petitioner. Therefore, Regular Criminal Case No. 445 of 2015, filed on 30th April 2015, is within the period of limitation.

33. The Revisional Court and the Magistrate failed to consider this aspect of the matter and therefore erred. The impugned Judgment is perverse and warrants the exercise of this Court's extraordinary jurisdiction. Consequently, this Petition is allowed, the impugned Judgment and Order dated July 2023 passed by the Revisional Court in Criminal Revision Application No. 30 of 2023 and the Order dated 23rd December 2022 passed by the Magistrate on Exhibit 72 in Regular Criminal Case No. 445 of 2015, are set aside to the aforesaid extent, in respect of Respondent Nos. 1 and 2 being discharged of the offence under Section 138 of the Negotiable Instruments Act, 1881. With

reference to the discharge of Respondent Nos. 1 and 2 in respect of the offence under Section 420 of the Indian Penal Code, 1860, the same is not interfered with.

34. Rule made absolute in terms of prayer clause (b). Regular Criminal Case No. 445 of 2015 is restored on the file of the Chief Judicial Magistrate, Kolhapur.

35. The parties shall appear before the Chief Judicial Magistrate, Kolhapur, on 30th November 2026 at 11:00 a.m. Mr. Anand S. Patil, learned Advocate for the Petitioner, and Mr. Jayant J. Bardeskar, learned Advocate for Respondent Nos. 1 to 3, state that the parties shall appear before the Chief Judicial Magistrate, Kolhapur, on 30th November 2026.

36. Criminal Writ Petition No. 6460 of 2024 stands disposed of.

37. No order as to costs.

(ASHWIN D. BHOBE, J.)