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IMPORTANT DECISIONS

▣ **Forfeiture of publication** — Power of Government to forfeit a newspaper, book or document has impact on freedom of speech and on right of privacy. Therefore provision regarding it demands strict construction **4290 (SC)**

▣ **Review** — Bar under S. 362, Cr. P.C. applies to High Court. Under S. 482, Cr. P.C., High Court cannot review judgment **4334 (Kar)**

▣ **Narco analysis test** — Person not consenting for it cannot be forcibly subjected to any test **4380 (Bom)**

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plainant is an aggrieved party and is one that initiates prosecution on the basis of which, the accused, if found guilty, is punishable with imprisonment. Therefore, a defacto-complainant has get every right to ensure that his/her case gets maximum exposure and the guilty is brought to book.

In a case reported in AIR 2001 SC 2023 : 2001 Cri LJ 2566 the Apex Court had opined that the defacto-complainant being the father of the victim had every right to file an application for cancellation of bail. It was also held by the Court that there was nothing to indicate that the said power can be exercised only if the State or investigating agency or a public prosecutor moves by a petition. This means that the Apex Court in the above referred judgment did not take away the locus-standi of a defacto-complainant who reserves the right to come up with any petition at any stage of trial to assist the Court to come to a logical conclusion of any case.

The purpose of writing this article is to seek an amendment of the Code of Criminal Procedure, empowering a defacto-complainant to monitor his/her case at all stages of trial for the ends of justice, equity and fair play.

COGNIZANCE OF OFENCE RELATING TO DISHONOUR OF CHEQUES (A STUDY IN RELATION TO UTTARAKHAND HIGH COURT'S DECISION IN RAMPRASAD DANGWAL'S CASE (2010 CRI LJ 1620)

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1. In cases of cheques dishonored on the grounds of insufficiency of funds to the credit of the drawer or within the period of validity, whichever is earlier, cognizance of the offence arising out of dishonour of the cheques can be taken by the Magistrate, only upon a complaint made in writing either by the payee or the holder in due course[1] within one month of the date on which the cause of action arises under Sec. 138 of the Negotiable Instruments Act, 1881. The dishonour of the cheque may also arise on the ground that if exceeds the amount arranged to be paid from his account by an agreement made with the bank[1-2].

2. Sec. 138 of the Negotiable Instruments Act, provides that the cause of action arises on expiry of 15 days from the date of service of notice requiring the drawer to make the payment. In the event of the amount not being paid within the aforesaid period of 15 days of statutory notice, it constitutes an offence under Sec. 138 of Negotiable Instruments Act.

3. Sec. 142 of the Negotiable Instruments Act which deals with the cognizance of a case under Sec. 138 of Negotiable Instruments Act does not provide any period before which the cognizance of the complaint is taken by the Magistrate, though it provides that the complaint should be made within one month from the date of the cause of action.

4. In case, the complaint is filed after the expiry of 15 days of the statutory period notice, the question arises whether the Magistrate can take cognizance of the case. In Supreme Court's decision is Narsing Das Tapadia's case[3], it was ruled that Sec. 138 of the Act[4] enables the Court to entertain a complaint, while Sec. 142 of the Act prescribes the period within which the complaint can be filed. However, it is significantly noticeable from either Sec. 138 or Sec. 142 of the Act, that no period is prescribed before which the complaint cannot be filed. The determining consideration being the cause of action arising and this is the date from which the period of limitation has to be computed.

5. In the event of the complaint being filed

1-2. This may also on account of exceeding the credit limit sanctioned by the bank to the holder of the account.

3. Narsing Das Tapadia v. Goverdan Das, AIR 2000 SC p. 2946.

4. "Act" through this article refers to the "Negotiable Instruments Act".

after the expiry of 15 days and before one month from the date of cause of action, it does not automatically mean that the Magistrate has taken the cognizance of the case. In other words, mere presentation of the complaint does not amount to taking cognizance. In such cases, the Magistrate may return the complaint to the complainant for filing it later or take cognizance only upon the expiry of one month period. However, in such cases the accused cannot take the plea of absolving himself from liability for the offence committed.

6. In Devarapalli Lakshminarayan Reddy's case[5], the Supreme Court has the occasion to deal with the interpretation of expression 'taking cognizance'. The Supreme Court expressed the view that the said expression has not been defined in the Criminal Procedure Code. Sec. 190 to Sec. 199 of the Criminal Procedure Code clearly provides thus :—

i. A case can be said to be instituted in a Court only when the Court takes cognizance of the offence;

ii. The way in which cognizance can be taken is set out in clauses (a), (b) and (c) of Sec. 190 (1) of Criminal Procedure Code which can be summarized as follows :—

a. Whether the Magistrate has or has not taken cognizance of the case will depend on the circumstance of the particular case such as—

i. Mode in which the case is sought to be instituted.

ii. The nature of the preliminary action if any taken by the Magistrate.

b. The Magistrate is said to have not taken cognizance of the offence, if he has in the exercise of judicial discretion taken action of the following nature.

i. Issuing a search warrant for the purpose of investigation; and

ii. Ordering investigation by the police under Sec. 156 (3)

iii. The Magistrate can be said to have taken cognizance only when the proceeds under Sec. 190 (1) (A) of Criminal Procedure Code read with Sec. 200 of Chapter XV of the said Code.

7. The intention of the legislature appears to be, upon a plain reading of Sec. 138 and Sec. 142, that is complaint can be filed by the payee or the holder in due course, anytime after 15 days expiry of the statutory notice period and within one month of the cause of action. The question of taking cognizance by the Magistrate of the complaint becomes a crucial issue. Instead of leaving the matter to judicial discretion, an amendment to Sec. 142 of the Act may be desirable to set at rest the controversy. The amendment may read thus;

....."No Court shall take cognizance on the complaint unless the complaint is made within one month or upon the expiry of 15 days of the notice period from the date on which cause of action arises". In other words the following expression shall be inserted in Sec. 142 or "upon the expiry of notice period of 15 days." If this amendment is made, the aggrieved party need not wait for period of one month to get relief for his pecuniary suffering and consequent agony and move the Court for the expeditious action for seeking justice. It may also be desirable to add a provision to Sec. 142 in these terms :—

"Provided the cases instituted under Sec. 138 shall be disposed of within a period of (60) days from the date of institution of the complaint, except where it cannot be done, due to circumstances beyond the control of the Court".

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5. Devarapalli Lakshminarayana Reddy v. Narayan Reddy, AIR 1976 SC p. 1672.