S.L. CONSTRUCTION & ANR. A

v.

ALAPATI SRINIVASA RAO & ANR.

(Criminal Appeal No.1761 of 2008)

OCTOBER 23, 2008 B

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Code of Criminal Procedure, 1973:

s.482 – Petition seeking to quash criminal proceedings u/ss 138 and 142 of Negotiable Instruments Act – Dismissed by High Court – HELD: Cheque was presented for third time within the stipulated period – What is prohibited is presentation of cheque after the prescribed period and not the number of times it is presented – The term 'cause of action' would mean each of the facts required to be proved – The first notice having not been served and the second notice having been withdrawn in terms of the reply of the defaulters themselves, the complainant cannot be said to have committed any illegality in presenting the cheque for the third time and issuing the third notice upon the defaulters – As per issuance of the cheque, non–payment thereof on presentation, issuance of a valid notice calling upon the drawer of the cheque to pay the amount in question and his failure to pay the complainant the amount within a period of 15 days from the date of receipt of a copy of the said notice, a cause of action arose for filing a complaint petition – Cause of action for filing a complaint arose only once and not more than once – High Court cannot be said to be have committed any error in dismissing the petition – There is no merit in the appeal, which is dismissed – Negotiable Instruments Act, 1881 – ss. 138 and 142 – Cause of action. **[Para 21–22, 29–30, 32–33 and 35] [58-C,D; 60-C,D,E,F,G; 61-C]** C D E F G

Sadanand Bhadran v. Madhavan Sunil Kumar, **[1998] 6 SCC 514, referred to.**

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A *Prem Chand Vijay Kumar v. Yashpal Singh and Anr.*, **[2005] 4 SCC 417 and** *Krishna Exports and Ors. v. Raju Das*, **[2004] 13 SCC 498, cited.**

Case Law Reference :

[1998] 6 SCC 514	**referred to**	**Para 12**
[2005] 4 SCC 417	**Cited**	**Para 12**
[2004] 13 SCC 498	**Cited**	**Para 12**

B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1761 of 2008.

C

From the final Judgment and Order dated 7.6.2006 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Petition No. 1365 of 2004.

Anagha S. Desai, Satyajit A. Desai and Venkateswara D Rao Anumolu for the Appellants.

G. Ramakrishna Prasad, Suyodhan Byrapaneni, Sidharth Patnaik and D. Bharathi Reddy for the Respondents.

The following Order of the Court was delivered :

E **ORDER**

Leave granted.

1. Appellants before us are aggrieved by and dissatisfied with the judgment and order dated 7.6.2006 passed by a F learned Single Judge of the High Court of Judicature of Andhra Pradesh at Hyderabad whereby and whereunder a petition under Section 482 of the Code of Criminal Procedure Code, 1973 praying for quashing the complaint proceedings under Section 138 and Section 142 of the Negotiable Instrument Act before the IV Additional Munsif Magistrate, Guntur taking G cognizance against them under Section 138 of the Negotiable Instruments Act, 1881, was dismissed.

2. The factual matrix involved herein is not in dispute.

3. Appellants had entered into some business transactions H in regard to supply of certain materials with Respondent No.1.

Appellant No.2 as a proprietor of appellant No.1 issued a cheque for a sum of Rs. 2 lacs in favour of the complainant–respondent on or about 22.6.2003. Appellants contend that the said cheque was issued by way of security.

4. The said cheque was presented in the bank on 23.6.2003. It was returned un–paid by the banker of the appellants on the ground of insufficient funds.

5. Another notice was sent for service on the proprietor of S.L. Structures and Engineers on or about 8.7.2003. However, admittedly, the said notice was not served upon the appellants.

6. The said cheque was again presented before the bank on 30.8.2003, and was again dishonoured.

7. Respondents served another notice upon the appellant No.2 describing him as a proprietor of S.L. Structures and Engineers and calling upon him to pay the said amount of Rs. 2 lacs within 15 days from the date of receipt thereof.

8. However, in response thereto the appellants' advocate by a letter dated 19.9.2003 pointed out that in stead and place of S.L. Structures and Engineers, the notice should have been sent to S.L. Constructions. It was stated thus:

> "That instead of sending the notice to S.L. constructions you send the notice to my client Shri K.P. Raju Proprietor of S.L. Structures and Engineers, Nagpur which is illegal. That by issuing such wrong and illegal notice your client lower down the status of my client in the eyes of general people and bankers and for which my client instructed me to take the appropriate action either Civil or Criminal in the Court of Law against your client."

9. It is in the aforementioned situation, the respondents presented the cheque for the third time before the bank on 11.12.2003 which having been dishonoured, another notice was sent and served on 17.12.2003. The cheque was dishonoured for the third time also.

A 10. Indisputably, as no payment was received from the appellant pursuant to the said notice, a complaint petition was filed on 23.1.2004. Upon receipt of summons, appellants moved the High Court under Section 482 of the Code of Criminal Procedure which, as noticed hereinbefore, by reason B of the impugned judgment has been dismissed.

11. Mrs. Desai, learned counsel appearing on behalf of the appellants raised the following contentions before us in support of this appeal;

C (i) Having regard to the provisions contained in Section 138 of the Negotiable Instruments Act and in particular the proviso appended thereto, the cheque could not have been presented for the third time;

D (ii) The complainant respondent having suppressed the fact of issuance of earlier notices, no order taking cognizance of the offence under Section 138 of the Negotiable Instruments Act should have been passed;

E (iii) The High Court failed to take into consideration that the cheque having been deposited after three months and three notices having been issued one after the other, no cause of action survived, as F earlier, two notices for presenting the cheque before the banker had been issued which had already been dishonoured.

12. Strong reliance has been placed by Mrs. Desai in this behalf on *Sadanand Bhadran v. Madhavan Sunil Kumar,* G [1998] 6 SCC 514; *Prem Chand Vijay Kumar v. Yashpal Singh and Anr.,* [2005] 4 SCC 417 and *Krishna Exports and Ors. v. Raju Das,* [2004] 13 SCC 498.

13. Learned counsel appearing on behalf of the H respondent, on the other hand, contented;

(i) The cheque having been presented within a period of six months, the order taking cognizance was not barred in terms of the proviso appended to Section 138 of the Negotiable Instruments Act;

(ii) The first notice having not been served and the appellants themselves having called upon the respondents to withdraw the second notice, cannot now be permitted to urge that the deposit of the cheque for the third time and issuance of third notice was illegal and without jurisdiction.

14. The Negotiable Instruments Act, 1881 was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

15. Chapter XVII of the Act provides for penalties in case of dishonour of cheques for insufficiency of funds in the accounts of the drawer thereof.

16. Indisputably, Chapter XVII , which was inserted by the Banking Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988) and came into force on 1.4.1989, was incorporated to "enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers."

17. It is in the aforementioned backdrop we may notice the provisions of Sections 138, 139 and 142 of the said Act:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge in whole or in part of

A any debt or other liability is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person B shall be deemed to have committed an offence and shall without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year or with fine which may extend to twice the amount of the cheque, or with both:

C Provided that nothing contained this section shall apply unless:

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn D or within the period of its validity whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within fifteen days E of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as F the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation:– For the purposes of this section, "debt or other liability" means a legally enforceable debt or other G liability.

139. Presumption in favour of holder—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in while or in part, of any H debt or other liability.

142. Cognizance of offences: Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974). A

(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

(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: C

"Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period. D

(c) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138:"

18. Indisputably, by reason of Section 138 of the Act a penal provision has been laid down that the issuer of any cheque would commit an offence if the cheque when presented is dishonoured. E

19. For the said purpose a legal fiction was created. The proviso appended to the said provision, however, restricts the application of the main provision by laying down the conditions which are required to be complied with before any order taking cognizance can be passed which are; (i) that the cheque must be presented within a period of six months from the date on which it is drawn; (ii) on the cheque being returned un–paid by the banker, a notice has to be issued within thirty days from the date of receipt of information by him from the bank regarding the cheque being unpaid; (iii) in the event, the drawer of the cheque fails to make payment of the said amount of money to be paid within 15 days from the receipt thereof, a complaint F G H

petition can be filed within the period prescribed in terms of Section 142 thereof.

20. The question which arises for our consideration is as to whether the aforementioned legal requirements have been complied with by the respondent herein so as to enable him to maintain the complaint petition or not.

21. The cheque is dated 22.6.2003. In terms of the afore–mentioned provisions it could have been presented within six months thereafter, namely, by 22.12.2003. Indisputably, the cheque was presented for the third time on 11.12.2003 i.e. within the prescribed period.

22. What is prohibited is presentation of the cheque within the afore–mentioned period and not the number of times it is presented. It is, therefore, immaterial whether for one reason or the other the complainant had to present the cheque for the third time or not.

23. We may now consider the submission of Ms. Desai, learned counsel as regards the issuance of successive notices.

24. The first notice purported to have been issued by the complainant–respondent on 8.7.2003 is not on record. Admittedly appellants have not received the same.

25. As regards notice dated 9.9.2003 which is said to be the second notice, it is evident that the same had not been served upon the appellants having been returned. If that be so, the presentation of the cheque for the second time and issuance of the second notice in our opinion would not be invalid.

26. We have, however, noticed hereinbefore that the appellant No.2 through his Advocate raised the question as regards the validity and/or legality thereof as the said notice was addressed in stead and place of S.L. Constructions and was issued in the name of and served on S.L. Structures and Engineers.

27. Appellants in our opinion having themselves raised the contention with regard to the legality and validity of the said notice and, furthermore, having called upon the complainant–respondent to withdraw the same, no exception can be taken to the step taken Abundanti Cautela by the complainant–respondent to present the cheque for the third time and issue another notice on 17.12.2003.

28. *Sadanandan Bhadran* (Supra) whereupon strong reliance has been placed by Mrs. Desai, learned counsel lays down the law in the following terms:

> "7. Besides the language of Sections 138 and 142 which clearly postulates only one cause of action, there are other formidable impediments which negate the concept of successive causes of action. One of them is that for dishonour of one cheque, there can be only one offence and such offence is committed by the drawer immediately on his failure to make the payment within fifteen days of the receipt of the notice served in accordance with clause(b) of the proviso to Section 138. That necessarily means that for similar failure after service of fresh notice on subsequent dishonour, the drawer cannot be liable for any offence nor can the first offence be treated as non est so as to give the payee a right to file a complaint treating the second offence as the first one. At that stage, it will not be a question of waiver of the right of the payee to prosecute the drawer but of absolution of the drawer of an offence, which stands already committed by him and which cannot be committed by him again."

It was further held:

> "8. The other impediment to the acceptance of the concept of successive causes of action is that it will make the period of limitation under clause(c) of Section 142 otiose, for, a payee who failed to file his complaint within one month and thereby forfeited his right to prosecute the

A drawer, can circumvent the above limitative clause by filing a complaint on the basis of a fresh presentation of the cheque and its dishonour. Since in the interpretation of statutes, the court always presumes that the legislature inserted every part thereof for a purpose and the legislative B intention is that every part should have effect, the above conclusion cannot be drawn for that will make the provision for limiting the period of making the complaint nugatory."

29. Indisputably, the term cause of action would mean each of the facts required to be facts required to be proved. C Successive issuance of notices having been made under Section 138 of the Act as laid down under the proviso appended thereto, the respondent merely made all attempts to comply with the legal requirements.

D 30. In this case, as indicated hereinbefore, the first notice having not been served and the second notice having been withdrawn in terms of the reply issued by the learned advocate for the appellants themselves, the complainant cannot be said to have committed any illegality in presenting the cheque for E the third time and issuing the third notice upon the defaulter.

31. We need not refer to the other decisions relied upon by Mrs. Desai, learned counsel as the same had merely followed the dicta laid down in *Sadanandan Bhadran* (supra).

F 32. As the issuance of cheque, non–payment thereof on presentation, issuance of a valid notice calling on the drawer of the cheque to pay the amount in question and the appellants' failure to pay to the complainant the amount in question within a period of 15 days from the date of receipt of a copy of the G said notice upon them, a cause of action arose for filing a complaint petition, in our opinion, the High Court cannot be said to have committed any error in passing the impugned judgment.

33. In view of the findings aforementioned we have no H

hesitation to hold that the cause of action for filing a complaint arose only once and not more than once as contended by Mrs. Desai, learned counsel. A

34. It may be true that the High Court has not elaborately dealt with this aspect of the matter, but the same would not mean that we should remit the matter back to the High Court for consideration of the matter afresh as we have gone into the question raised by the parties ourselves. B

35. For the reasons aforementioned, there is no merit in this appeal and it is dismissed accordingly with costs. Counsel's fee quantified at Rs. 10,000/–. C

R.P. Appeal dismissed.