(1999) 02 MAD CK 0002

In the Madras High Court

Case No : Criminal O.P. No''s. 9882, 9883, 9884, 10044 etc. etc. of 1998

ABK Publications Ltd. and Others — APPELLANT

Vs

Tamil Nadu Newsprint and Papers Ltd. — RESPONDENT

Date of Decision : 03-02-1999

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1999) 2 ALT(Cri) 336 : (1999) 3 CivCC 279 : (1999) CriLJ 2741 : (1999) 3 RCR(Criminal) 734

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : A. Natarajan, for the Appellant; K. Asokan and Rangarajan, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—All these applications could be disposed of by a common order as the parties and the question of law involved

are one and the same.

2. The main point urged in these petitions for quashing the proceedings initiated for the offence u/s 138 of the Negotiable Instruments Act by Mr.

A. Natarajan, the counsel for the petitioners is that the cheques in question have been presented in the petitioners''-bank after six months from the

date on which they were drawn and so, the complaints are not maintainable.

3. The facts are these :- Tamil Nadu Newsprint and Papers Limited, the complainant/the respondent herein, is engaged in the business of

manufacturing newsprint, writing paper and printing. The petitioners/accused, being the publisher of Telugu Jatteya Dhina Patrika Vartha (a Telugu

Daily) placed certain orders with the complainant for the purchase of newsprint.

Towards the discharge of the dues, the accused issued 77

cheques, all drawn on Andhra Bank, Ashok Nagar Branch, Hyderabad. All the 77 cheques bear the dates from 23-7-1997 to 25-9-1997 for a

total amount of Rs. 1,61,82,386.10. These cheques were presented for collection in the complainant''s bank, viz., City Bank, Anna Salai, Chennai

on 22-1-1998. The said cheques and the cheque return memo dated 28-1-1998 along with the debit advice were received by the complainant.

On 12-2-1998, the complainant issued a statutory notice to the accused. Though it was received by the accused on 14-2-1998, no payment had

been made. Therefore, various complaints have been filed in respect of all these cheques.

4. It is mainly contended by the counsel for the petitioners that among the 77 cheques, the first four cheques do bear the dates 23-7-1997, 24-7-

1997, 24-7-1997 and 25-7-1997. According to him, these cheques ought to have been presented on or before 24-1-1998 i.e., before expiry of

the six months'' period from which they were drawn, to the petitioners''-banker, viz. Andhra Bank, Ashok Nagar, Branch, Hyderabad. In the

instant case, all these cheques were presented on 22-1-1998 not in the petitioner''s-bank, but in the complainants-bank, viz., City Bank, Anna

Salai, Chennai on 22-1-1998.

5. According to the counsel for the petitioners at least these 4 cheques which have been returned on 28-1-1998, must have been presented prior

to 24-1-1998. In view of the cheque return memo dated 28-1-1998, it must be taken to mean that they were not presented within the due date in

the petitioner''s-bank. Therefore, the complaints in respect of all these cheques are invalid. In order to substantiate this point, the counsel for the

petitioners would cite the decision in Om Prakash v. Gurcharan Singh, 1997 (3) Cri 433.

6. This decision would not be of any use to the petitioners as the reading of S. 138 of the Negotiable Instruments Act would make it clear that the

presentation of the cheque in the bank would include the complainant''s-bank also. According to S. 138 of the Negotiable Instruments Act, 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, is returned

by the bank unpaid, such person shall be deemed to have committed the offence. This offence would complete only when the drawer fails to make

the payment of the cheque amount within 15 days from the date of receipt of the statutory notice.

7. One of the pre-requisites for presentation of cheque is contained in proviso (a) to S. 138 of the Negotiable Instruments Act and according to

which the cheque has to be presented in the bank within a period of six months from the date on which it is drawn or within the period of its

validity, whichever is earlier. This would show that the bank could very well return the cheque if it is presented after expiry of six months period

from the date on which it is drawn.

8. The word ''the bank,'' as contained in proviso (a) to S. 138 of the Negotiable Instruments Act, would clearly show that the presentation of the

cheque should be made in the bank which could entertain the same. The banks, which could entertain the cheque, are either the drawer''s bank or

the payee''s bank. While the payee presents the cheque in the payee''s bank in order to forward it to the drawer''s bank, virtually, the payee''s

bank acts as an agent of the drawer''s bank on whose behalf the amount is being disbursed by the payee''s bank. Therefore, the reading of the

proviso (a) to S. 138 of the Negotiable Instruments Act would clearly show that the cheque can be presented either in the payee''s bank or in the

drawer''s bank and the date of presentation in the respective bank will be reckoned for calculating the period of six months from the date on which

it is drawn.

9. Therefore, in the instant case, even the 4 cheques out of 77 cheques have been presented in the payee''s bank well within the time of six months

from the date on which they are drawn.

10. In these circumstances, I do not find any merit in the contention urged by counsel for the , petitioners. Therefore, these petitions are dismissed.

Consequently, the connected Crl. M.Ps. stand closed.

