
(2007) 06 J&K CK 0004
In the Jammu And Kashmir High Court

Aman Mahajan

APPELLANT

Vs

Veenu Mahajan

RESPONDENT

Date of Decision : 04-06-2007

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2009) 1 CivCC 742 : (2008) 1 JKJ 283

Hon'ble Judges : Jai Pal Singh, J

Bench : Single Bench

Judgement

J.P. Singh, J.—Aggrieved by Special Municipal Magistrate Jammu's Order dated 19-04-2005 taking cognizance of offence punishable u/s

138 of the Negotiable Instruments Act, 1881 and issuing process there for, the petitioner, arrayed as an accused in respondent's complaint, initially

approached Learned Magistrate for dropping proceedings relying upon the law laid-down by Hon'ble Supreme Court of India in Krishna Exports

and Ors. v. Raju Dass reported as (2004) 13 SCC, 498, had initially approached the Learned trial Magistrate for dropping proceedings.

2. The grievance of the petitioner, though addressed to and found to be genuine, was not redressed because of the legal impediment of

Magistrate's not possessing power of review, or, for that matter, inherent jurisdiction to correct an error, even if one was found to have occurred.

3. Petitioner has thus approached this Court invoking its inherent jurisdiction to quash the proceeding initiated on the complaint of the respondent.

4. None had appeared for the petitioner when this petition was taken up for consideration.

5. Ms. Padmaja Vemuri Lal, learned Counsel for the respondent-complainant, when confronted with the law laid-down by Hon'ble Supreme

Court of India in Krishna Export's Case, tried to justify the issuance of process, even when the complaint had been filed beyond the period

prescribed for filing such complaints u/s 142(b) read with Section 138 of the Negotiable Instruments Act, 1881, saying that the Magistrate did

possess the jurisdiction to take cognizance of the offence even after the time prescribed u/s 142(b) of the Negotiable Instruments Act and all that

was required was an explanation from the complainant that he had sufficient cause for not filing complaint within the prescribed period, which

cause, according to the learned Counsel, had been reflected in the complaint of the respondent.

6. I have considered learned Counsel's submissions and gone through the provisions of Section 138 and 142 of the Negotiable Instruments Act, 1881.

7. True it is that the proviso appended to Section 142 of the Negotiable Instruments Act, 1881 permits the Court to take cognizance of a

complaint even if it had been filed after the prescribed period of limitation, if the complainant would satisfy the Court that he had sufficient cause for

not making a complaint within such period. Equally true is the submission of learned Counsel for the respondent that the expression ""sufficient

cause"" appearing in the proviso indicates wide discretion in the Court to entertain the complaint on any justifiable cause even after the prescribed

period of limitation; But this proviso and expression ""sufficient cause"", cannot, by any stretch of reasoning, be construed providing a fresh cause of

action to a payee or the holder of a cheque as contemplated by Section 138 of the Negotiable Instruments Act, on each and every presentation of

a cheque for payment. This is so because such construction of the proviso, as suggested by Mrs. Padmaja, would amount to rewriting of Section

138 of the Negotiable Instruments Act thereby providing recurring cause of action to the payee or holder of the cheque, as the case may be, to

keep on presenting cheque as many times as he wanted so to do, of course during the period of validity of the cheque, and thereafter file a

complaint in case of dishonour of the cheque on any such occasion, at the discretion of the holder of the cheque. This in my opinion, does not

appear to be the intention of the Parliament in enacting the proviso which had been so enacted only to take care of those contingencies where the

payee or holder of the cheque for one or the other reason had been disabled to file the complaint within the prescribed period of limitation.

8. Limitation for filing complaint u/s 138 of the Negotiable Instruments Act would commence from the date on which cause of action u/s 138(c) of

the Negotiable Instruments Act, 1881, would accrue to the payee or holder of the cheque. This cause of action, in terms of Section 138(c) of the

Negotiable Instruments Act, 1881, would commence if no payment was made despite issuance of the statutory notice within the period prescribed

u/s 138(b) of the Negotiable Instruments Act. By enacting the proviso to Section 142 of the Act, the Parliament had vested authority in the

Magistrate to consider extension in one month's time contemplated u/s 142(b) of the Negotiable Instruments Act if sufficient cause for not filing the

complaint had been made out by the complainant, And not the cause of action itself.

9. I, therefore, do not find any merit in the submission of Mrs. Padmaja Vemuri Lal that the proviso appended to Section 142 of the Negotiable

Instruments Act would extend the cause of action too which, in my opinion, would arise only once i.e. after the issuance of notice on dishonour of

cheque and failure of the drawer of the cheque to make the payment therefore within the prescribed period.

10. The cheque in question dated 14-08-04 for an amount of Rs. 22,398 having been dishonoured resulting in issuance of first notice on 10-02-

2005 and omission of the petitioner to make payment within the prescribed period u/s 138 of the Negotiable Instruments Act, 1881 had provided

a cause of action to the complainant to file a complaint against the petitioner within the period prescribed u/s 142(b) of the Negotiable Instruments

Act, 1881. The respondent does not appear to have filed a complaint on the basis of this statutory notice. She, on the other hand, had presented

the cheque again for payment for the second time, allegedly on the request of the petitioner which was again dishonoured resulting in issuance of

the second notice on 09-03-2005. Payment having not been made by the petitioner, had resulted in filing of the complaint against the petitioner by

the respondent.

Respondent had invoked proviso appended to Section 142 of the Negotiable Instruments Act, 1881, to project that request of the petitioner to the

respondent to present the cheque again would constitute sufficient cause in terms of the proviso and hence her complaint was not barred by time.

11. For all what has been said above, in the penultimate paragraph of this judgment, I am of the view that alleged request of the petitioner to the

respondent to present the cheque again would neither extend the cause of action nor amount to sufficient cause contemplated by the proviso in

extending the period of limitation. Complaint filed by respondent against the petitioner, on which process was issued by Learned Special Municipal

Magistrate, Jammu on 19-04-2005, thus a clear case of abuse of process of the Court. Proceedings initiated, by Learned Magistrate on

respondent's complaint are accordingly quashed.