
(2009) 04 BOM CK 0052

In the Bombay High Court

Case No : Criminal Application No"s. 3029 and 3030 of 2006

Devi Packaging Industries and etc.

APPELLANT

Vs

Bazargaon Paper and Pulp Mills Pvt. Ltd.

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2009) 2 ALD(Cri) 23 : (2009) CriLJ 3207 : (2009) 4 MhLj 390

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : S.V. Bhutada, for the Appellant; M.R. Joharapurkar, for the Respondent

Final Decision : Allowed

Judgement

R.C. Chavan, J.—These two applications u/s 482 of the Code of Criminal Procedure raise a common question relating to tenability of a complaint filed after the prescribed period of limitation, by presenting the cheque again after first dishonour, in respect of offence punishable u/s 138 of the Negotiable Instruments Act.

2. The applicants in both these cases are accused before the learned Judicial Magistrate First Class, Nagpur in Criminal Complaint Nos. 2337 and 2339 of 2005. Criminal Complaint bearing No. 2337 of 2005 was filed in respect of cheque Nos. 272309, 274088 and 274086 issued by the applicant in favour of the complainant. Criminal Complaint No. 2339 of 2005 is in respect of Cheque No. 279014 likewise issued by the applicant in favour of the original complainant. In the complaints filed, the cheques were shown to have been presented by the complainant on 5-8-2005 and 6-8-2005. They were dishonoured and an intimation of dishonour was received by the complainant. On 1-9-2005, the notices were sent to the applicants by the complainant demanding the amounts under the cheques. These notices were duly received by the present applicants.

The present applicants, however, failed to comply with the demand within a period of 15 days from the receipt of notice and, therefore, the complainant filed two complaints within a month thereafter. On these averments, after examining the complainant, the learned Judicial Magistrate First Class, Nagpur, directed issuance of process against the present applicants.

3. The applicants challenged the said orders by preferring revisions bearing No. 420 of 2006 and 421 of 2006 before the Court of Session at Nagpur. It was contended that the complainant had suppressed the fact that before issuance of notice dated 1-9-2005, two earlier notices were issued on 28-3-2005 in respect of three cheques and on 25-7-2005 in respect of cheque No. 279014. However, the complaint were not filed in spite of non-compliance with the said notice. Therefore, according to the applicant, presentation of the cheques for the second time and its second dishonour and subsequent issuance of second notices would not bring the complainant's case within limitation. The learned Additional Sessions Judge, however, dismissed the petitions holding that the question whether the complainant had issued notices prior to 1-9-2005 was required to be decided on merits, presumably on facts. Aggrieved thereby, the applicants are before this Court.

4. Upon issuance of notice, the non-applicant appeared, but had failed to deny in the reply that the two earlier notices on 28-3-2005 and 25-7-2005 in respect of the four cheques had been issued. The original complainant/non-applicant contended that the issuance of notice is required to be proved by leading evidence. This stand is impermissible, since it was necessary for the non-applicant to respond to the contentions in para 2 of the application, which specifically refers to issuance of earlier notices. Be that as it may, the learned Counsel for the non-applicant, in course of his oral submissions, did not dispute the fact that the complainant had earlier issued the two notices. The submission of the applicant on oath about two earlier notices not having been rebutted, it has to be held that two notices had been issued prior to issuance of notices dated 1-9-2005.

5. The learned Counsel for the applicant submitted that it is settled position of law that cause of action to file a complaint for offence punishable u/s 138 of the Negotiable Instruments Act gets crystallized the moment a notice demanding the amount of cheque dishonoured is issued. Upon failure of the drawer to pay the amount of money of the cheque within 15 days from the date of receipt of notice, the limitation starts running and in view of the provisions of Section 142(b) of the Negotiable Instruments Act, such complaint has to be filed within one month from the date of accrual of this cause of action. Now in this case, since the notices had already been issued on 28-3-2005 and 25-7-2005 and since the applicant had not paid the amounts demanded by the said notices within 15 days from the receipt of such notices, the cause of action to file the complaints had already accrued and the complaints ought to have been filed within a period of one month after accrual of such cause of action.

6. The learned Counsel for the original complainant, relying on a judgment of the Supreme Court in *S.L. Construction and Another Vs. Alapati Srinivasa Rao and Another*, , submitted that a complaint could be filed after failure of the accused to comply with the last notice. I have carefully gone through the judgment, which also considers earlier judgment of the Supreme Court in *Sadanandan Bhadran Vs. Madhavan Sunil Kumar*, , where the Court had held in paras 7 and 8 of the judgment as under:

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.

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 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 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.

In *S.L. Construction*, the Supreme Court did not hold that the decision in *Sadanand Bhadran v. Madhavan Sunil Kumar* AIR 1998 SC 3043 needed to be interpreted in different fashion. It held, as a matter of fact, in para 30 of the judgment as under:

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 the third time and issuing the third notice upon the defaulter.

It may thus be seen that the Court had held in *S.L. Construction* (2009 AIR SCW 1044) that earlier notices had not at all been served, the first notice having not been served and the second having been withdrawn. Therefore, the presentation

of the cheque for the third time and issuance of notice upon its dishonour thereafter were held to give rise to fresh cause of action. Such is not the present case. In the cases before this Court, earlier notices dated 28-3-2005 and 25-7-2005 had been duly received by the applicant. Therefore, the cause of action had crystallized and it was incumbent upon the complainant to file complaints before the Magistrate within a month of failure of the applicant to comply with the notices. The complainant's filing complaint on the basis of the subsequent dishonour and consequent notice without even bothering to refer to the earlier presentation of the cheque and issuance of notices was impermissible.

7. The learned Additional Sessions Judge ought to have seen that uncontroverted allegations in the revision application would imply that the fact of issuance of first two notices was not disputed by the complainant. Therefore, there was no need to remit the parties back to agitate this question before the Trial Court. In view of this, the judgments rendered by the learned Additional Sessions Judge cannot at all be sustained.

8. The impugned orders are quashed and set aside. The process issued against the applicant by the learned Magistrate is quashed.

9. Rule is made absolute in above terms.