
(1996) 09 DEL CK 0034

In the Delhi High Court

Case No : Criminal Revision No. 177 of 1995

German Remedies Ltd.

APPELLANT

Vs

Harish C. Duggal Agencies and others

RESPONDENT

Date of Decision : 20-09-1996

Acts Referred:

Citation : (1996) 4 AD 585 : (1997) 1 BC 60 : (1997) 90 CompCas 335 : (1997) 1 Crimes 421 : (1996) 64 DLT 163 : (1997) 40 DRJ 411 : (1997) 115 PLR 22

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : P.H. Parikh and Sanjay Bhartari, for the Appellant; H.L. Raina, for the Respondent

Judgement

N.G. Nandi J.

1. This criminal revision application, u/s 397 read with section 401 of the Code of Criminal Procedure, 1973, is directed against the order dated June 9, 1995, passed by the learned Metropolitan Magistrate, Delhi, discharging the accused and dismissing the complaint u/s 138(b) of the Negotiable Instruments Act (hereinafter referred to as "the Act").

2. It is suggested from the record of the court below that a complaint u/s 138 of the Act came to be filed by the complainant, German Remedies Ltd., a company, wherein accused Nos. 1 to 3 were summoned by the court of learned Metropolitan Magistrate for the offence punishable u/s 138 of the Act. The accused gave an application u/s 245 read with sections 258 and 259, Criminal Procedure Code, for discharge. It is contended before the trial court that the summoning of the accused was not justified as there was no legal notice after the dishonour of the cheques requiring the drawer of the cheques to make the payment in respect of dishonoured cheques within 15 days and that the alleged notice dated September 14, 1993, is just a business letter requiring the accused persons to make the payment against the outstanding bills; that the alleged notice is not a notice within the meaning of section 138 of the Act. The learned

Magistrate, accepting the contention of the accused, granted the application and dismissed the complaint u/s 138 of the Act, discharged the accused. It is this order which is sought to be revised in this petition by the complainant.

3. It is submitted by Mr. Raina, learned counsel for the respondent accused persons, that in the notice the requirements of section 138(b)(c) of the Act have not been complied with.

4. Section 138 of the Act deals with the dishonour of cheques for insufficiency, etc., of funds in the account. Clause (b) thereof provides that "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 of the receipt of information by him from the bank regarding the return of the cheque as unpaid; Clause (c) provides that "the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."

5. In the instant case, it is not disputed that the cheques issued by the accused were returned dishonoured on account of insufficiency of funds. It is also not in dispute that till today the amounts of the dishonoured cheques have not been paid by the accused to the complainant.

6. A perusal of the record of the trial court suggests the complaint u/s 138 of the Act having been filed on October 28, 1993, in the court of the learned Additional Chief Metropolitan Magistrate, New Delhi. In para 3 thereof, it is stated that accused No. 1, through its two directors, accused Nos. 2 and 3, had issued eight cheques totalling Rs. 25,99,300.76 which were drawn on Canara Bank, Gole Market, New Delhi. Then para 3 proceeds to state the number of cheques, dates and the amount. It is further alleged in the complaint that the above said cheques were deposited by the complainant company at its State Bank of India, Darya Ganj branch, New Delhi, for its collection; that the banker of the complainant company sent the cheques for realisation; that the said cheques were returned unpaid by Canara Bank, Gole Market, New Delhi, with the endorsement "Not arranged for/exceeds arrangements"; that the complainant company received communication from their banker in the month of September, 1993, that the cheques have been returned unpaid as aforesaid.

7. In para 5, it is alleged that the complainant company, vide their letter dated September 14, 1993, wrote to the accused persons demanding payment of the entire amount which was due, i.e., Rs. 25,99,300.76 that the accused persons were further informed that on their failure to pay the outstanding amount, legal action would be taken against them.

8. Thus, in paras 3 and 5 of the complaint it is alleged that eight cheques amounting to Rs. 25,99,300.76 issued by the accused persons were presented for realisation to the bank by the complainant and that these cheques were returned dishonoured with the endorsement "not arranged for/exceeds

arrangements" and that the complainant received the intimation to this effect from its banker in the month of September, 1993, and, thereafter, the complainant, vide its letter dated September 14, 1993, wrote to the accused persons demanding payment of the entire amount of Rs. 25,99,300.76.

9. It is pertinent to note that it is not the say of the accused in the application seeking discharge/dismissal of the complaint u/s 138 of the Act that no notice/letter has been received by the complainant. In other words, the factum of the writing of the notice/letter and the receipt of the same by the accused demanding the amount pursuant to the return/dishonor of the cheques issued to the complainant company has not been denied. The contention on behalf of the respondents in this regard is that the communication dated September 14, 1993, is not a notice because the word used is "letter". A communication may be called by any name, letter or notice. What is to be seen is the substance, namely, the contents and requisitions in the communication and it is not disputed that by the requisition, call it letter or notice, the accused were required to make payment of the entire amount of Rs. 25,99,300.76 which is the amount of the eight cheques issued by the accused to the complainant, which were returned dishonoured.

10. One of the arguments advanced on behalf of the respondents is that by the communication/letter/notice dated September 14, 1993; the complainant only gave 11 days time to comply with the requisitions thereof and not 15 days time, as contemplated under clause (c) of section 138 of the Act. It may be appreciated that clause (c) gives 15 days statutory period to the drawer of the cheque to make payment of the amount covered under the dishonoured cheques issued by the drawer. Now, simply because the complainant has restricted the period for making the payment to 11 days, that would not absolve the drawer of the cheques from making the payments within 15 days of the receipt of the communication/letter/notice under clause (b). Supposing in a given case, the payee of a dishonoured cheque restricts the period of payment under clause (c) to 3 days, would that deprive or disentitle the drawer of the dishonoured cheque of 15 days statutory period, as envisaged under clause (c) ? The answer has to be in the negative because the drawer of the dishonoured cheque on receipt of the letter/intimation/notice under clause (b) would be entitled to 15 days statutory period for making the payment of the amount covered by the dishonoured cheques and it would be open to such a drawer to send the amount so as to reach the payee of the dishonoured cheques within 15 days as contemplated under clause (c). Suffice it to say for the present purpose that simply because the complainant has restricted the period for making the payment of the amount covering the dishonoured cheques to 11 days that would not absolve the drawer of the dishonoured cheques, i.e., the accused from making the payment within the statutory period of 15 days and the accused cannot take advantage of the complainant having restricted the period for making the payment for less than 11 days.

12. In the present case, it is not the say of the accused that no demand notice

under clause (b) was given by the complainant. What is disputed is the notice not being as per the requirement of clauses (b) and (c) as observed as above.

13. Counsel for the respondents has relied on the decision in the case of Rajiv Kumar v. State of U.P. by the Allahabad High Court decided on 7-3-1991 in C.M.A. No. 3463 of 1991 (see [1993] 78 Comp Cas 507 wherein it is held that in the case under sections 138 and 142 of the Negotiable Instruments Act, in the case of dishonour of cheque, demand notice not served nor payment refused, in the absence of demand notice, no cognizance of offence can be taken. Reliance is also placed on the decision in the case of Arsika Engineer v. Euroka Fuse in Crl. M.P. No. 3684 of 1990, decided on 2-9-1991 by the Madras High Court, wherein considering proviso (b) to section 138 of the Act, it has been held that "prosecution cannot sustain without serving demand notice in the case of dishonour of cheque". There can be no disagreement with these principles of law since these are the requirements of law, namely, provisos (b) and (c) to section 138 of the Act, which is not the position here as pointed out above.

14. On behalf of the respondent reliance has been placed on the decision in the case of K.M. Mathew Vs. State of Kerala and another, , wherein it is held that under sections 202, 204, Criminal Procedure Code, in a private complaint u/s 504/34, Indian Penal Code, even after the process is issued, there is no bar to drop proceedings against any of the accused persons, if the complaint does not prima facie disclose any offence against him.

15. On behalf of the petitioner, reliance is placed on the decision in the case of M/s. Electronics Trade and Technology Development Corpn. Ltd., Secunderabad Vs. M/s. Indian Technologists and Engineers (Electronics) Pvt. Ltd. and another, wherein it is held that ". . . once the cheque has been drawn and issued to the payee and the payee has presented the cheque and thereafter, if any instructions are issued to the bank for non-payment and the cheque is returned to the payee with such an endorsement, it amounts to dishonour of cheque and it comes within the meaning of section 138."

16. In view of the above, the order dated June 9, 1995, by the Metropolitan Magistrate, Delhi, in Complaint Case No. 492/1, dated October 28, 1993, dismissing the complaint u/s 138 of the Act, would be liable to be revised and set aside and the petition allowed with a direction to the trial court to decide the said complaint in accordance with law.

17. In the result, the present revision petition is allowed.