

(1999) 11 DEL CK 0008
In the Delhi High Court
Case No : Criminal M. (M) 874/99

Kiran Overseas Exports Ltd and Others APPELLANT
Vs
Air Force Naval Housing Board and Another RESPONDENT

Date of Decision : 04-11-1999

Acts Referred:

Citation : (1999) 6 AD 405 : (2000) 1 CivCC 368 : (1999) 82 DLT 615 : (2000) 1 RCR(Criminal) 263

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : Sh. Rajiv Nayar and Sh. Suchit Mohanty, for the Appellant; Sh. P.P.S. Premi and Sh. Raman Sawhney, for the Respondent

Judgement

K.S. Gupta, J.—This petition u/s 482 Cr. P.C. has been filed for quashing the complaint case No. 71/98 under Sections 138/141/142 etc of the Negotiable Instruments Act, 1985 (for short "the Act") and the proceedings taken out therein.

2. In said complaint the petitioner No. 1, a company and petitioners 2 to 7 being its directors Along with others have been imp leaded as accused persons. It is not in dispute that Air Force Naval Housing Board, respondent No. 1 - complainant deposited with petitioner No. 1 Rs. 50 lakhs for a period of six months and towards repayment of that amount and interest accruing thereon the petitioner No. 1 issued post dated cheques. Cheque towards principal amount of Rs. 50 lakhs dated 28th May, 1997 on being presented was dishonoured by the bankers on 31st May 1997 with the remarks "exceeds arrangements". Thereafter, legal notice dated 11th June, 1997 was got served by respondent No. 1 on petitioner No. 1. Said cheque on being presented for encashment by respondent No. 1 was again dishonoured. Thus, another legal notice dated 3rd November, 1997 was got served by respondent No. 1 on petitioner No. 1 and on failure of petitioner No. 1 to make the payment of the said cheque above complaint case No. 71/98 was filed on 5th February 1998 before a Metropolitan Magistrate. By

way of pre-summoning evidence the respondent No. 1 examined P.C. Bhat as CW-1 on 7th February, 1998/ 19th September 1998 and by the order dated 19th September 1998 the petitioners were summoned for 19th October, 1998 to face the trial u/s 138 of the Act. It is also not in dispute that though in the complaint cause of action for filing it was based on the notice dated 11th June 1997 but the statement of P.C. Bhat, CW-1 refers to another notice dated 3rd November, 1997 issued to petitioner No. 1 company.

3. Relying on the decision in *Sadanandan Bhadran Vs. Madhavan Sunil Kumar*, , submission advanced by Sh. Suchit Mohanty for petitioners was that the complaint in question was not maintainable as it was barred by limitation under clause (b) of Section 142 of the Act. In *Sadanandan Bhadran's* case (*supra*) the respondent handed over a cheque for Rs. 30,000/- to the appellant on 4th January 1991 for liquidation of the loan amount and the cheque on being presented for encashment on 5th January, 1991, was returned for want of sufficient funds in the account of respondent. Thereafter the appellant got sent a lawyer's notice to the respondent on 15th January 1991 calling upon him to pay the aforesaid amount. At the request of respondent said cheque was again presented on 4th May, 1991 and this time also the cheque was dishonoured for want of sufficient funds. Thus another notice dated 9th May, 1991 was served upon the respondent demanding the payment of cheque and on respondents' failure to make payment the complaint came to be filed u/s 138 of the Act on 30th June 1991. On that complaint cognizance was taken and the respondent was summoned to face trial. After entering appearance the respondent filed an application alleging that there could not be more than one cause of action in respect of single cheque, Therefore, the complaint was not maintainable. The trial Magistrate accepting that contention of the respondent acquitted him. Appeal taken against that order by the appellant was also dismissed by the High Court. On matter being taken by the appellant to Supreme Court the appeal too was dismissed. On Page 519 of the report which is relevant it was held:-

"The combined reading of the above two sections of the Act leaves no room for doubt that cause of action within the meaning of Section 142(c) arises- and can arise - only once.

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."

4. Evidently, present case is squarely covered by the decision in Sadanandan Bhadran's case (supra). Since the first notice which alone furnished the cause of action to file the criminal complaint was sent on 11th June, 1997, the complaint filed by respondent No. 1 on 5th February, 1998, was barred by limitation under clause (b) of Section 142 of the Act. Complaint in question thus deserves to be quashed being not legally maintainable u/s 482 Cr. P.C.

5. For the foregoing discussion, said complaint case No. 71/98 and the proceedings taken out therein are hereby quashed.