

(1999) 08 CAL CK 0053

In the Calcutta High Court

Case No : Criminal Revisional Jurisdiction C.R.R. No. 351 of 1999

Kulik Paper Industries (Pvt.) Ltd. and Another

APPELLANT

Vs

Sri Sanjay Agarwala

RESPONDENT

Date of Decision : 25-08-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239, 240, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 139, 142

Citation : (2000) 3 CALLT 92 : (2000) 1 CHN 472

Hon'ble Judges : Debiprasad Sengupta, J

Bench : Single Bench

Advocate : Mr. Biplab Mitra and Mr. Subir Banerjee, for the Appellant; Mr. Achintya Kumar Dutta and Mr. T. Roy Chowdhury, for the Respondent

Judgement

D.P. Scngupta, J.—This revisional application is for quashing of a proceeding being C.R. Case No. 478/ u/s 138 of the Negotiable instruments Act pending in the Court of the learned Sub-Divisional Judicial Magistrate, Raiganj, Uttar Dlnajpur.

2. The opposite party herein filed a petition of complaint in the Court of learned Sub-Divisional Judicial Magistrate, Raiganj alleging commission of an offence u/s 138 of the Negotiable instruments Act. In the said petition of complaint it was alleged that the accused No. 2 is the Director of the accused No. 1 Company, who was in charge of and was responsible to the conduct of the day to day business of the Company. For the payment of some outstanding bills the accused person issued four cheques drawn on Central Bank of india, Calcutta Main Office in favour of the complainant. The aforesaid four cheques were duly presented for encashment by the complaint But out of the said four cheques only one cheque was honoured by the Bank and the rest three cheques were dishonoured by the Bank due to insufficient fund in the account. Having received the said intimation from the Bank the complainant sent a demand notice through his Advocate on 30.6.97 asking the accused person to make the payment of the cheque amount

within the stipulated period. It was alleged that having received the aforesaid notice the accused met the complainant and requested him to present the said three cheques once again for encashment after 25th July, 1997. The complainant accepted the said request of the accused and presented the said three dishonoured cheques for encashment in Allahabad Bank, Mohanbati Branch. But the said three cheques were again dishonoured by the Bank, which was intimated to the complainant by the Bank through a memo dated 7.8.97. The complainant thereafter sent a demand notice for the second time to the accused No. 1 on 18.8.97. After delivery of the said notice the acknowledgement card was received by the complainants' Advocate on 21.8.97. Thereafter on failure to make the payment by the accused the petition of complaint was filed in Court.

3. On 19.2.98 an application was filed on behalf of the present petitioner before the learned Magistrate challenging the maintainability of the proceeding. The petitioner prayed for discharge from the said case on the ground that the petition of complaint was filed beyond the statutory period as prescribed in the NI Act. It was further stated in the said application that the company was declared as a sick industrial Company under the Sick industrial Companies (Special Provisions) Act. The said application was taken up for hearing on 28.10.98 and the same was rejected by the learned Magistrate. It is at this stage the petitioners have come up before this Court challenging the said order dated 28.10.98 as also with a prayer for quashing of the proceeding.

4. Mr. Mitra, learned Advocate appearing for the petitioners submits that the legal formalities as laid down u/s 138 read with section 142 of the Negotiable instruments Act having not been strictly complied with the prosecution is not legally maintainable and the continuation of the above criminal case will be an abuse of the process of the Court Mr. Mitra further submits that the complainant failed to file the petition of complaint within the stipulated time after the first cause of action arose and he had no right to file the complaint on the basis of second cause of action and failure to do so makes the case time barred. Mr. Mitra relies on a judgment reported in *Sadanandan Bhadran Vs. Madhavan Sunil Kumar*, by the Hon'ble Apex Court as follows :

"A cheque can be presented any number of times during the period of its validity by payee. On each presentation of the cheque and its dishonour a fresh right--and not cause of action--accrues in his favour. He may, therefore, without taking preemptory action in exercise of his such right under clause (b) of section 138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But, once he gives a notice under clause (b) of section 138 he forfeits such right for in case of failure of the drawer to pay the money within the stipulated time he would be liable for the offence and the cause of action for filing the complaint will arise. Needless to say, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawer, expires."

5. The Hon''ble Supreme Court further observed in the said Judgment as follows :--

"Consequent upon the failure of the drawer to pay the money within the period of 15 days as envisaged under clause (c) of the proviso to section 138, the liability of the drawer for being prosecuted for the offence he has committed arises, and the period of one month for filing the complaint u/s 142 is to be reckoned accordingly. 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 arises and can arise only once."

6. Relying on the aforesaid Judgment Mr. Mitra submits that in the instant case admitted position is that first demand notice was sent on 30.6.97. So, on failure to make the payment by the accused within 15 days from the date of receipt of such demand notice, the cause of action arose. In view of the provision of the NI Act the petition of complaint was to be filed within one month from the date when cause of action arose, which was not done in the present case.

7. Now, the question is whether the complainant ought to have filed the complaint within one month after the expiry of the period of 15 days after service of first demand notice dated 30.6.97 or whether he can issue a second demand notice and take action on the basis of second cause of action created on the failure to make the payment after receipt of the second notice by the accused. It is needless to mention that on this point law is very much settled in view of the Judgment of the Hon''ble Supreme Court referred to above *Sadanandan Bhadrans Vs. Madhavan Sunil Kumar*, .

8. The learned Advocate appearing for the complainant opposite party submits that at this initial stage of the proceeding this Court should not interfere in the matter and quash the proceeding. He relies on a Judgment reported in (1996) SCC 164, wherein it was held by the Hon''ble Supreme Court that in quashing of proceeding at the initial stage the power u/s 482 Cr.PC should be very sparingly and cautiously exercised and at that stage High Court should not sift or appreciate the evidence and come to the conclusion that no prima facie case is made out. The learned counsel referred to another Judgment of the Hon''ble Apex Court reported in *Maruti Udyog Ltd. Vs. Narender and Others*, wherein it was held by the Hon''ble Court that in view of the express provision of section 139 of NI Act a presumption must be drawn that the holder of the cheque received the cheque, of the nature referred to in section 138 of the Act. for the discharge of any liability unless the contrary is proved. Therefore. It was held by the Hon''ble Court, the High Court was not Justified in entertaining and accepting the plea of the accused at the initial stage of the proceeding and quashing the complaint. The next judgment relied on by the learned Advocate of the opposite party is reported in 1999 Cal. Cr.LR 215. In the said Judgment it was held by the Hon''ble single Judge of this Court that for prosecution under the provision of the NI Act the demand notice should contain only the cheque amount and mentioning of any other amount in the notice renders the notice in-valid. The

learned Advocate relies on another judgment of the Hon''ble Apex Court reported in Minakshi Bala Vs. Sudhir Kumar and Others, wherein it was held by the Hon''ble Court that once charges are framed High Court, in its revisional Jurisdiction, is not Justified in quashing the proceeding relying upon documents other than those referred to in section 239 and 240 of the Code of Criminal Procedure.

9. I have carefully gone through the judgments referred to above and in my opinion, none of the aforesaid judgments is applicable in the present case. The point involved in the present case is completely different from that decided in the aforesaid judgments relied on by the learned Advocate of the complainant. In deciding the present case I find support from the Judgment referred to by the learned Advocate of the petitioner Sadanandan Bhadran Vs. Madhavan Sunil Kumar, which is very much applicable in the present case.

10. It, therefore, follows that the cause of action for lodging the complaint arose after the expiry of the period of 15 days from the date of receipt the demand notice by the accused. In the instant case the admitted position is that the complainant failed to avail the opportunity of lodging complaint after the cause of action arose. On the contrary on subsequent dishonour of cheque he issued a second demand notice and on failure to make the payment within the stipulated period he filed the petition of complaint on the second cause of action.

11. In my considered opinion. In view of the decision of the Hon''ble Supreme Court Sadanandan Bhadran Vs. Madhavan Sunil Kumar, it must be held that the petition of complaint filed by the complainant in the instant case is barred by limitation. The point raised by the petitioner goes to the root of the matter and can be gone into in quashing the proceeding. In my view, the instant proceeding should be quashed on tills score alone.

12. In the result the revisional application succeeds and the same is allowed. The proceeding being C.R. Case No. 478/97 pending in Court of the learned Sub-Divisional Judicial Magistrate, Ralganj. Uttar Dlnajpur, is hereby quashed.

13 . Application succeed