(1992) 10 DEL CK 0051

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 1282 of 1992

Madan Mohan APPELLANT

Vs

K.M. Menon and Others RESPONDENT

Date of Decision : 15-10-1992

Acts Referred:

Citation : (1993) 2 ALT(Cri) 4 : (1993) 1 BC 185 : (1993) 2 CivCC 35 : (1994) 79 CompCas 710 : (1993) CriLJ 2654 : (1993) 1 Crimes 1167 : (1993) 50 DLT 33 : (1993) 3 RCR(Criminal) 277 : (1993) 1 RCR(Criminal) 233 : (1993) RLR 119

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : H.K. Sakhuija and R.K. Bahri, for the Appellant;

Judgement

Usha Mehra, J.

(1) Shri Madan Mohan, the petitioner herein, has assailed the order of the Metropolitan Magistrate dated 6/12/1991 on the ground that the Magistrate fell in grave error in observing that the cheque issued by the drawer cannot be presented more than once in order to attract the provisions of Section 138 of the Negotiable Instrument Act (hereinafter called as the "Act").

(2) In order to appreciate the contentions of the parties, the brief facts are that the petitioner along with his son is the owner of the premises situated in 0-4, Swastik Bhawan, Ranjit Nagar, Commercial Complex, near Satyam Cinema, New Delhi-8. The respondents took this commercial premises of the petitioner on tenancy on a monthly rent of Rs. 137.00persquare feet made of Rs. 12.00. The rent for structure of the premises of Re. l.00 as the rental for the fittings and fixtures therein. The tenancy was made for 33 months. The rent agreed to be paid every month came tors.3,744.00andRs.624.00. The respondent issued a cheque for Rs. 7,488.00as an initial payment and thereafter the payment became irregular even the cheque when presented was dishonoured with the remarks "refer to drawer". It is further the case of the petitioner that from

February to September, 1991,the rent became due and payable to the tune of Rs. 39,000.00 out of which the respondent paid on different dates a sum of Rs. 19.656.00 leaving a balance due and payable. As part discharge of the above liability, the respondent issued a cheque on 3/07/1991 for a sum of Rs. 19,344.00drawn on Punjab National Bank, Tropical Building, New Delhi. The cheque was returned unpaid by the Banker with the remarks "Refer to drawer" on 1 7/07/1991. The petitioner approached the respondent and informed him about the dishonouring of the cheque and demanded payment and on request of the respondent to re-present the cheque, the petitioner did it and again the cheque was dishonoured and the reason given by the bank was" insufficient funds .It is in this background a notice was given and thereafter complaint was filed u/s 138 of the Act read with. Section 420 I.P.C.

(3) The learned Magistrate took the view that so far as Section 420 Indian Penal Code is concerned, since there was no inducement, so the provisions of Section 420 I.P.C. w(re not attracted. As regard the complaint u/s 138 of the Act, it observed that the same does not contemplate more than one presentation and repeated cause of action and Therefore dismissed the complaint.

(4) I have heard Mr. U.K. Sukhija, Counsel for the petitioner andMr.R.K.Bahrifor the State. Section 138 of the Act Jays down that if a cheque issued pursuant to a debt or other liability is returned to the bank unpaid ,either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account, the drawer shall be liable to be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of cheque, or with both A cheque can be presented to the bank within a period of six months from the date on which it was drawn or with the period of its validity, whichever is earlier as laid down in Clause (a) of the proviso to Section 138. Clause (b)of the said Proviso lays down that the payee or the holder in due course may make a demand for payment of the amount covered by the cheque by giving a notice in writing to the drawer of the cheque, within fifteen days of the dishonor of the cheque. Clause (c) of the proviso enables the drawer of the cheque to make payment of the amount covered by the cheque to the payee within fifteen days of the receipt of the notice under Clause (b). It is also provided u/s 142 of the Act that the complaint has to be filed within a period of one month from the date on which the cause of action arises.

(5) The scheme of Sections 138 and 142 of the Act shows that the cheque can be presented to the bank within a period of 6 months from the date of its issuance or within the period of its validity whichever is earlier. Clause (a) of Proviso to Section 138 does not lay down as to ''how many'' or number of times a cheque can be presented to the bank. It only talks about the presentation of the cheque within a period of six months. I find force in the submission of the Counsel for the petitioner that the legislature never intended that on the first default the drawer of the cheque should be dragged to litigation. In fact in commercial

transactions circumstances may arise where the drawer on the cheque being dishonoured may request the drawer to represent the same and in order to keep the cordial relations with regard to business transactions the drawee may re-present the cheque again ardencies the same. Therefore, to draw the presumption that the legislature intended that the cheque can only be presented once to my mind is not a correct position of the law and in this regard I am supported by the decision of the Andhra Pradesh High Court in the case of Richard Samson Sherrat v.Sudhir Kumar Sanghi & Another, reported in 1992 (2) Crim 150where it was held that when the statute has not laid down limitation, on the number of times that a cheque may be presented within the period of six months or any shorter period under Clause (a) of Proviso to Section 138, it will not be desirable to read into the said clause any such restriction as to number of times a cheque may be presented. Similar view was followed by the Kerala High Court in the case of Ravindranathan v. Hussain, reported in II (1992) CCR 2129 where it was observed that the Act does not compel the petitioner to issue a notice immediately upon dishonour. Subject to the outer limit prescribed, there can be representation of the cheque and the cause of the action for the complaint would arise only when pursuant to the dishonor, notice was issued and there was refusal/failure to pay.

(6) In view of my above discussion. I set aside the impugned order and remand the case to the Magistrate concerned to try it in accordance with law.

