
(1990) 12 KL CK 0032

In the High Court Of Kerala

Case No : Criminal M.C. No. 379 of 1990

Mahadevan Sunil Kumar and Another

APPELLANT

Vs

Bhadran and Others

RESPONDENT

Date of Decision : 05-12-1990

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 142, 94

Citation : (1991) CivCC 512 : (1992) 74 CompCas 805 : (1991) 1 KLJ 335

Hon'ble Judges : K.G. Balakrishnan, J

Bench : Single Bench

Advocate : B. Gopakumar, for the Appellant; Pirappancode V.S. Sudheer, for respondent Nos. 1 and 2 and K.M. Stalin, for the Respondent

Judgement

K.G. Balakrishnan, J.—The petitioners are accused in S. T. No. 1205 of 1989 on the file of Additional Judicial First Class Magistrate's Court, Kollam. Annexure 1 compliant was filed by respondents Nos. 1 and 2 alleging that the petitioners-accused committed offences punishable u/s 138 of the Negotiable Instruments Act and Section 420 of the Indian Penal Code. The gist of the allegation against the petitioners is that, on July 31, 1989, both these petitioners along with the mother of the second petitioner approached the first respondent and asked for a loan of Rs. 60,000. In the complaint, it is alleged that the first respondent was made to believe that there were sufficient funds in the bank account maintained by the accused and, on the basis of this representation, the first respondent gave Rs. 60,000 to the first accused. The first respondent presented the cheque for payment on September 1, 1989, and the cheque was dishonoured. The first respondent met the petitioner. However, the amount was not paid. Thereafter, on October 12, 1989, the cheque was again presented for payment. Then also, it was dishonoured. Notices were sent to the petitioners-accused. The second accused refused to accept the notice and the acknowledgment in respect of the notice issued to the first petitioner was not received by the first respondent. No amount was paid by the petitioners and, therefore, the complaint was filed.

2. The petitioners seek to quash the complaint mainly for two reasons. Learned counsel for the petitioners submits that the cheque was presented on September 1, 1989, and it was dishonoured and there arose a cause of action for the first respondent to file a complaint u/s 138 of the Negotiable Instruments Act, However, no such complaint was filed on the basis of dishonour of cheque on September 1, 1989. The petitioners were also not served with a notice when the cheque was dishonoured on September 1, 1989. Learned counsel for the petitioners contends that a second presentation of the cheque is not contemplated and there cannot be any prosecution for the offence u/s 138 of the Negotiable Instruments Act on the basis of the second presentation of the cheque. I am unable to accept this contention. Under the provisions of the Negotiable Instruments Act, a cheque drawn by the drawer would be valid for a period of six months. The payee or holder in due course is entitled to present a cheque for payment at any time within the period of six months. For successful prosecution of an offence u/s 138 of the Act, a payee or holder in due course must have presented the cheque before the bank for payment. If there is a dishonour of the cheque on presentation for payment, he must issue a notice in writing within a period of 15 days to the drawer u/s 138(b) of the Act and he must be given 15 days' time to pay the amount covered by the cheque and if the drawer fails to make the payment of the said amount to the payee within 15 days of the receipt of such notice u/s 142(b) of the Act, the payee or holder in due course is entitled to file a complaint within one month of the date of cause of action that arose under Clause (c) of the proviso to Section 138. From these provisions, it is clear that cause of action for filing the complaint may arise on several occasions and the payee or holder in due course is entitled to present the cheque at any time within a period of six months from the date on which it was drawn and, for filing the complaint, he should have served notice of such dishonour to the drawer. The payee or holder in due course can make a second presentation of the cheque and, if the other conditions are fulfilled, he can launch a complaint on the basis of the second dishonour of the cheque as the cheque would remain valid for a period of six months.

3. Another contention raised by the petitioners' counsel is that the first petitioner did not receive any notice and so long as he has not received any notice u/s 138(b) of the Act, there cannot be any prosecution for the offence u/s 138. It is contended that a cause of action for the offence u/s 138 would arise only after a period of 15 days of the receipt of the said notice. The first respondent would contend that the notice was issued to the first petitioner but, however, the acknowledgment was not received. u/s 27 of the General Clauses Act, the service shall be deemed to be effected if a properly addressed and prepaid letter containing the document is sent by registered post, unless the contrary is proved. Section 27 of the General Clauses Act reads as follows :

"Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other

expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

4. u/s 94 of the Negotiable Instruments Act, the mode in which the notice of dishonour may be given is mentioned. If the notice duly directed and sent by post miscarries, such miscarriage does not render the notice invalid. So, merely because of the fact that the notice sent by the first respondent was not received by the petitioner, it cannot be said that there was no proper service of notice. It is submitted that the first respondent produced the receipt issued by the postal authorities in court. It is for the petitioner to prove that he had not received any notice. The prosecution now launched is not liable to be quashed for this reason.

5. The prosecution as against the second petitioner stands on a different footing. Even on the allegations in the complaint, she has not borrowed any amount from the first respondent. She had not issued any cheque in favour of the first respondent. The allegations in annexure 1 complaint would show that the second petitioner only accompanied the first petitioner when the latter went to borrow the amount from the first respondent. The prosecution filed against the second petitioner is without any bona fides and if the entire allegations in the complaint are taken in their entirety, no offences u/s 138 of the Negotiable Instruments Act and 420, Indian Penal Code, would be attracted. Therefore, I quash the entire proceedings initiated by the first respondent as against the second petitioner. The proceedings in annexure 1 complaint will continue in accordance with law as against the first petitioner.

6. Criminal miscellaneous case is disposed of as above.