

(1992) 03 AP CK 0001

In the Andhra Pradesh High Court

Case No : Criminal Petition No's. 1687 of 1991 and 190 of 1992

Richard Samson Sherrat

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 12-03-1992

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1992) 2 APLJ 27 : (1992) CivCC 730 : (1992) CriLJ 2566 : (1992) 2 RCR(Criminal) 611

Hon'ble Judges : J. Eswara Prasad, J

Bench : Single Bench

Advocate : J. Prabhakar, for the Appellant; Addl. Public Prosecutor and Pratap Narayan Sanghi, for the Respondent

Judgement

1. The array of parties is the same in both the cases. The petitioner is accused of the offence u/S. 138 of the Negotiable Instruments Act, 1881 in C.C. No. 95/91 in the Court of the II Metropolitan Magistrate, Hyderabad. The second respondent laid complaints against the petitioner in C.C. Nos. 95/91 and 169/91 in the aforesaid Court alleging that the petitioner issued seventeen post-dated cheques in terms of compromise arrived at between the parties towards recovery of rents due from the petitioner. In No. 95/91 the complainant presented the cheque dated 20-4-91 for encashment and it was returned twice by the bank on 23-4-91 and 3-6-91 with the endorsement "refer to drawer". The second cheque dated 25-4-91 was also returned once and was presented on 3-6-91 again, which was also returned with the endorsement "insufficient funds". The third cheque dated 4-5-91 was also dishonored twice on 7-5-91 and 3-6-91 with the same endorsement. The complainant alleges that the cheques were presented after giving due prior notice by the letter dated 28-5-91 to the petitioner, who paid a sum of Rs. 4,000/- and was still liable to pay the balance. The complainant issued a lawyer's notice dated 10-6-91 which was received by the petitioner on 13-6-91, but the petitioner failed to make any payment.

2. The learned counsel for the petitioner contended that the complaint is time-barred, as it was presented on 5-7-91, beyond one month from the date when the cause of action arose, under Clause (c) of Proviso to S. 138 of the Act. The causes of action arose on the dates when the cheques were returned after presentation for the first time. The learned counsel argued that no fresh cause of action can arise on presentation of cheques for a second time and such representation of cheques is not contemplated to give rise to fresh cause of action under the proviso to S. 138.

3. In support of his contention, the learned counsel for the petitioner relied on the judgment of a Division Bench in *Kumaresan v. Ameerappa* 1992 (1) Crimes 23, and contended that the payee cannot have a second cause of action on the same cheque when once he had failed to institute a complaint on the strength of the first cause of action. A Division Bench of the Kerala High Court differed from the view expressed by another Division of the same High Court in *Mahadevan Sunil Kumar v. Bhadrans* 1991 (1) Kar LJ 335, and held that there can be no second cause of action on the same cheque. In *Mahadevan's* case, the Division Bench held as follows :

"It is clear 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 representation of the cheque and if 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."

4. Section 138 of the Act lays 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 the 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 within the period of its validity, whichever is earlier, as laid down in Clause (a) of the Proviso to S. 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 dishonour 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). Clause (b) of S. 142 imposes a limitation of a period of one month for lodging a complaint from the date on which the cause of action arises under Clause (c) of Proviso to S. 138.

5. From the scheme of Ss. 138 and 142, it is seen that a cheque can be

presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. Clause (a) of Proviso to S. 138 does not lay down as to the "number of times" a cheque can be presented to the bank. In Kumaresan's case (1 supra) the Division Bench differed with the judgment in Mahadevan's case rendered by another Division Bench - observing as under :

"From the scheme of the provisions in Chapter XVII of the Act two features loom large. First is that more than one cause of action on the same cheque is not contemplated or envisaged. Second is, institution of prosecution cannot be made after one month of the cause of action. If more than one cause of action on the same cheque can be created, its consequence would be that the same drawer of the cheque can be prosecuted and even convicted again and again on the strength of the same cheque. Legislature cannot be imputed with the intention to subject a drawer of cheque to repeated prosecutions and convictions on the strength of one cheque".

6. The first assumption of the learned Judges in Kumaresan's case (1 supra), with respect, cannot be accepted. When the statute has not laid down any 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 S. 138, it will not be desirable to read into the said clause any such restriction as to the number of times a cheque may be presented. It is common knowledge that in commercial practice, a cheque may be presented any number of times within the period of its validity. The second assumption of the learned Judges of the Division Bench also cannot be accepted, with all due respect. If the cheque is returned and the complaint is filed within the stipulated period after the cause of action arose, the cheque has necessarily to be filed along with the complaint and it will not be possible for the complainant to present the same cheque again and the question of the drawer of the cheque being prosecuted again and again on the strength of the same cheque, does not arise. The principle of *autrefois acquit* or *autrefois convict* will also come into play and the drawer of a cheque cannot be subjected to repeated prosecutions and convictions on the strength of one cheque. I am in entire agreement with the decision in Mahadevan's case (2 supra), which, in my considered opinion, laid down the correct view of law.

7. The learned counsel for the petitioner relied on the *The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur*, and contended that S. 138 of the Act should be interpreted liberally in favour of the accused, as it is a penal provision. The Supreme Court in that decision held that where the legislature clearly declares its intent in the scheme and language of the statute, it is the duty of the Court to give effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law given, more so if the statute is a taxing statute. The legislature thought fit to prescribe a period of six months or the period of validity of the cheque, whichever is earlier, for

presentation to the bank under clause (a) of Proviso to S. 138. No restriction as to the number of times a cheque can be presented to the bank within the said period is prescribed. It is therefore not open to the Court either to engraft or to imply anything which is not congenial to or consistent with such expressed intent of the law-giver. In Crawford's "Construction of Statutes" (1940 Edition at page 269) it was observed :

"Where the statute's meaning is clear and explicit, words cannot be interpolated. In the first place, in such a case they are not needed. If they should be interpolated, the statute would more than likely fail to express the legislative intent, as the thought intended to be conveyed might be altered by the addition of new words. They should not be interpolated even though the remedy of the statute would thereby be advanced, or a more desirable or just result would occur. Even where the meaning of the statute is clear and sensible, either with or without the omitted word, interpolation is improper, since the primary source of the legislative intent is in the language of the statute".

8. In view of the clear expression of the intent of the legislature to enable the presentation of the cheque within a period of six months from the date it is drawn or within the period of its validity, whichever is earlier, and in the absence of any restriction imposed by S. 138 of the Act on the number of times a cheque may be presented to the bank within the same period, it is not open to this Court to read into the Section, by adding anything to it.

9. The rest of the contentions of the petitioner involve questions of fact relating to the alleged offence. The question whether the accused had to pay money to the complainant and whether he had issued the cheque, as well as other questions of fact have to be established on evidence. It is a matter of evidence whether the complainant is able to establish the various allegations, as held in P. T. V. Ramanuj Achari v. Giridharlal Agrawal 1991 (II) ALT 10. There are no grounds to quash the proceedings under S. 482, Cr.P.C. The Crl. Petition No. 1687/91 is dismissed.

10. Though the dates of cheques, dates of return by the bank and the dates of notices are different the questions to be considered in Crl. Petition No. 190/92 are the same as in Crl. Petition No. 1687/91. For the reasons mentioned in Crl. Petition No. 1687/91, the Crl. Petition No. 190/92 also is dismissed.

11. Petition dismissed.