

**(1995) 01 KL CK 0040**

**In the High Court Of Kerala**

**Case No :** Criminal Miscellaneous Case No. 230 of 1994

S.K.D. Lakshmanan Fireworks Industries and Another

APPELLANT

Vs

K.V. Sivarama Krishnan and Another

RESPONDENT

**Date of Decision :** 09-01-1995

**Acts Referred:**

Constitution of India, 1950 — Article 20(2)  
Criminal Procedure Code, 1973 (CrPC) — Section 300  
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

**Citation :** (1995) 1 CivCC 400 : (1995) 84 CompCas 447 : (1995) 2 ILR (Ker) 19 : (1995) 2 RCR(Criminal) 23 : (1995) 2 RCR(Criminal) 463

**Hon'ble Judges :** M.M. Pareed Pillay, Acting C.J.; T.V. Ramakrishnan, J; P. Shanmugam, J

**Bench :** Full Bench

**Advocate :** C. Pius Kuriakose, for the Appellant; K.G. Balasubramanian and K.C. Peter, for the Respondent

**Final Decision :** Dismissed

## Judgement

T.V. Ramakrishnan, J.—The correctness of the Division Bench decision in Kumaresan (N.C.) v. Ameerappa [1992] 74 Comp Cas 848 ker; [1991] 1 KLT 893 which settled the conflict between the two earlier decisions of the two learned single judges of this court was doubted by another Division Bench in this criminal miscellaneous case and it is thus that the case is before us. In the reference order, the Division Bench has pointed out that in the light of the decisions in Syed Rasool and Sons and Others Vs. Aildas and Company and Another, , Rakesh Nemkumar Porwal Vs. Narayan Dhondu Joglekar, , Voltas Limited and Others Vs. Hiralal Agarwalla and Others, and Arjun Marik v. State of Bihar [1994] 1 KLT 33 (SN) (Case No. 32), the decision of the Division Bench in N.C. Kumaresan's case [1992] 74 Comp Cas 848 ker ; [1991] 1 KLT 893 requires reconsideration. The conflict settled by N.C. Kumaresan's decision was between the judgment in Mahadevan Sunil Kumar v. Bhadrans [1992] 74 Comp Cas 805 ker ; [1991] 1 KLT 651 and the judgment in Kuriyan (K.T.) v. Sreedharan (K.K.) [1992] 74 Comp

Cas 853 (Ker), In N.C. Kumaresan's case [1992] 74 Comp Cas 848 (Ker), the Division Bench has approved the view taken in Kuriyan (K.T.) v. Sreedharan (K.K.) [1992] 74 Comp Cas 853 (Ker) and has disapproved the view taken in Mahadevan Sunil Kumar's case [1992] 74 Comp Cas 805 (Ker) ; [1991] 1 KLT 651.

2. Before dealing with the point arising for consideration, we may refer briefly to the conflict settled by N.C. Kumaresan's case [1992] 74 Comp Cas 848 (Ker). In Mahadevan Sunil Kumar's case [1992] 74 Comp Cas 805 (Ker), Balakrishnan J. has held that the 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 if other conditions are fulfilled he can launch a complaint on the basis of the second or any subsequent dishonour of the cheque as the cheque would remain valid for a period of six months. The learned judge has obviously proceeded on the basis that successive causes of action can arise on the repeated presentation and dishonour of the same cheque during its validity and the payee or holder in due course can initiate prosecution for offence u/s 138 of the Negotiable Instruments Act, 1881 (for short "the Act"), with reference to any one of the causes of action if he satisfies strictly the other conditions prescribed in the relevant provisions contained in Chapter VII of the Act. It was on the basis that the view so taken in Mahadevan Sunil Kumar's case [1992] 74 Comp Cas 805 ker : [1991] 1 KLT 651 is contrary to the view taken by Padmanabhan J. in Kuriyan (K.T.) v. Sreedharan (K.K.) [1992] 74 Comp Cas 853 (Ker) that the matter was referred to a Division Bench and the decision now doubted was rendered by that Division Bench.

3. We may also note here itself that the decision in N.C. Kumaresan's case [1992] 74 Comp Cas 848ker : [1991] 1 KLT 893 has been followed in a later decision in K. Chellakkannu Nadar Vs. Chenkal M.R. Simon and Another, by the same learned judge who has rendered the decision in N.C. Kumaresan's case [1992] 74 Comp Cas 348 Ker sitting singly repelling an appeal for reconsideration of the said decision in the light of the decisions in Syed Rasool and Sons and Others Vs. Aildas and Company and Another, and Rakesh Nemkumar Porwal Vs. Narayan Dhondu Joglekar,

4. At this stage we may briefly state the facts of the case on hand: The petitioners are the accused in S. T. No. 561 of 1993 on the file of the Chief Judicial Magistrate's Court, Thrissur. They are being proceeded against on the basis of a complaint filed by the first respondent in the criminal miscellaneous case u/s 138 of the Act. The petitioners have filed the criminal miscellaneous case to quash the complaint u/s 482 of the Criminal Procedure Code, 1973. The petitioners have admittedly issued a cheque for Rs. 20,645 to the first respondent. The complaint was filed after the cheque was dishonoured by the drawee bank on August 11, 1993, and after the petitioners have failed to pay the amount demanded as per the notice issued on August 11, 1993, and received by

the petitioners on August 19, 1993, and August 20, 1993, In the criminal miscellaneous case the petitioners have contended that even before August 11, 1993, the cheque was once presented and dishonoured in May, 1993. Pointing out such dishonour the first respondent has issued a letter to the petitioners dated May 10, 1993, claiming bank charges. No complaint was filed on the basis of the first dishonour which took place prior to the dishonour on August 11, 1993. As such it was contended that the complaint filed by the first respondent on the basis of which a case has been charged against them is not maintainable in the light of the principles laid down in N.C. Kumaresan's case [1992] 74 Comp Cas 848 (Ker). It was submitted that since the first respondent has not filed any complaint on the basis of the first cause of action which accrued to him following the first dishonour the complaint now filed on the basis of the second dishonour is not maintainable in law. Treating it as a complaint filed with reference to the first cause of action it is not maintainable in law since it has been filed after the expiry of the period fixed u/s 142(b) of the Act. The authority strongly relied upon in support of the contentions was N.C. Kumaresan's case [1992] 74 Comp Cas 848 (Ker).

5. The interesting question thus arising for consideration is whether the payee or holder in due course of a dishonoured cheque can validly initiate prosecution for an offence u/s 138 of the Act with reference to a second cause of action if he had not taken advantage of the first cause of action accrued to him and prosecuted the offender in time. In other words, the question is, can successive causes of action for prosecution arise on the basis of one and the same cheque and if the payee or holder in due course has failed to initiate prosecution on the first cause of action whether he will forfeit his right to do so on the basis of the second or any subsequent cause of action ?

6. Even at the outset we may state that there is a conflict of opinion on the point under consideration between various High Courts. The High Courts of Bombay, Calcutta, Andhra Pradesh and Madras have taken a view contrary to the one taken in N.C. Kumaresan's case [1992] 74 Comp Cas 848 (Ker). In fact Kumaresan's case was considered and specifically dissented from in some of the reported decisions of the above High Courts. On the other hand, the Punjab and Haryana High Court has followed N.C. Kumaresan's case [1992] 74 Comp Cas 848 (Ker) and has held that there can only be one cause of action as far as a particular cheque is concerned for the purposes of Section 138 of the Act. We may refer to the various decisions a little later.

7. Chapter XVII of the Act, as it now stands, was incorporated in the Act with effect from April 1, 1989, by Section 4 of the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988. The Objects and Reasons clause of the Bill, which introduced the Amending Act, would show that the new Chapter was incorporated specifically to "enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in the case of bouncing of cheques due to insufficiency of funds in

the accounts or for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers." It is obviously to achieve the above objective that the provisions have been incorporated in the Chapter creating a new offence in cases where a cheque bounces when presented for payment and conferring a new criminal remedy on the affected party, namely, the payee or holder in due course of the dishonoured cheque in addition to the existing civil remedy.

8. Broadly the scheme of the provisions in Chapter XVII is thus : The main part of Section 138 of the Act creates a new offence when a cheque is returned by the bank unpaid either because the amount of money standing to the credit of the account of the drawer is insufficient to honour the cheque or it exceeds the amount arranged to be paid from the account of the drawer. A penalty of imprisonment for a term which may extend to one year or fine which may extend to twice the amount of the cheque is prescribed as punishment for the offence. Clause (a) of the proviso to Section 138 is an important provision as far as the point under consideration is concerned and it is to the effect that the section will be applicable only in case the cheque is presented for payment within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. The other conditions to constitute the offence are : (1) the payee should have made a demand for payment by registered notice after the cheque is returned unpaid, and (2) the drawer should have failed to pay the amount demanded within 15 days of the receipt of notice. Section 139 of the Act casts a rebuttable presumption that a holder of a cheque has received the same towards discharge of a liability. Section 140 of the Act specifically precludes the drawer from pleading that he had no reasons to believe that the cheque would be dishonoured. Another important aspect to be noted is that as per Section 142 the offence has been specifically made cognizable only on the basis of a written complaint filed by the payee or holder in due course of the cheque. Section 142(b) specifically prescribes a period of one month for filing a complaint from the date on which the cause of action arises under Clause (c) of the proviso to Section 138 of the Act.

9. The scheme of the provisions contained in the new Chapter would indicate that it is primarily to provide an additional criminal remedy over and above the civil remedies available under the Act to the payee or holder in due course that the new provisions in Chapter XVII of the Act have been incorporated in the Act. The punishment imposed is also fairly deterrent. The remedy provided is specifically subject to very strict terms and conditions. The fact that the offence created by the enactment is made cognizable only on the basis of a written complaint filed by the payee or holder in due course and that too only in cases where the cheque is presented for payment within a maximum period of six months from the date of issue of the cheque or the period of its validity, whichever is earlier, would indicate that it is a remedy granted to the affected parties to protect their interest by prosecuting the defaulting parties within a reasonable time. In other words, it can only be considered as an optional remedy

available in addition to the ordinary civil remedies. Unless the affected party files a written complaint after satisfying all the statutory conditions, an offence committed cannot be taken cognizance of. There is no provision in the Chapter which compels a payee or holder in due course to file a complaint on the commission of an offence by the drawer of the cheque. In fact we feel that it is a benefit conferred solely for the protection of the interest of the payee or holder in due course of a dishonoured cheque and as such liable to be waived or renounced by the beneficiary on the legal principle *cuilibet licet juri pro se introducto renunciare* meaning that "anyone may waive or renounce the benefit of a principle or rule of law that exists only for his protection". The right to prosecute the defaulting party to the contract between the payee and the drawer cannot be considered as one conferred for the benefit of the community as a whole. In this view of the matter, it may not be possible to hold that the payee or holder in due course is bound to exercise his right to prosecute the offender even if a cause of action as contemplated by Clause (c) of the proviso to Section 138 arises in his favour. He may for his own reasons waive or renounce his right and omit to file a complaint against the offender within the time specified by Section 142(b) for filing a complaint. If that be so, the only other question to be considered is whether such a payee or holder in due course who fails to exercise his right to prosecute the offender at the first instance either voluntarily or at the request of the offender will lose the benefit conferred by the provisions even if he is able to establish the ingredients of the offence and satisfy the other requirements of law statutorily prescribed for initiating prosecution for an offence u/s 138 of the Act ?

10. While considering the above question it is relevant to note that in law a cheque can be presented for payment repeatedly any number of times within six months from the date of drawing of the cheque or within the period of its validity, whichever expires earlier. Such repeated presentation even after dishonour at each time may be either voluntary or at the instance of the drawer. Even after such repeated dishonour it is open to the payee or holder in due course to defer further action based on dishonour. It may also be open to the payee or holder in due course to take further action to complete the cause of action as provided in Clauses (b) and (c) of the proviso to Section 138 and not to file a complaint within the time specified u/s 142(b) of the Act for his own reasons. In that event, obviously, the payee or holder in due course will lose his right to prosecute the offender for the offence he has already committed by defaulting payment as demanded by the notice issued under Clause (b) of the proviso to Section 138 of the Act. But, so long as the cheque remains unpaid the payee or holder in due course will certainly be entitled to present the cheque again. If the cheque is again dishonoured, no provision in Chapter XVII of the Act would expressly preclude the payee or holder in due course from issuing a notice of demand under Clause (b) of the proviso to Section 138 of the Act and in the case of default in making payment as demanded, from filing a complaint on the basis of the fresh cause of action which accrues to him thereby for a second time. If such

a complaint is filed and the complainant is able to establish all the ingredients of the offence and satisfies all the other conditions required to be complied with for filing a complaint, it may not be possible to hold on the basis of any express provision in the Act that the complaint is not legally maintainable.

11. However, it was vehemently contended by learned counsel for the petitioners that the cumulative effect of the various conditions and restrictions contained in Sections 138 and 142 of the Act is to restrict the right of prosecution to the first cause of action alone. It was submitted that if a fresh cause of action is allowed to be created successively it may be possible for the payee or holder in due course to avoid the bar of limitation prescribed for filing a complaint u/s 142(b) of the Act. Such an interpretation which may enable a party to avoid the bar of limitation cannot be accepted as legal. It was also contended that if the payee or holder in due course in such a case has not filed a complaint within the stipulated period he should be deemed to have forfeited his right to resort to criminal proceedings under this Chapter. The payee may still go on presenting the cheque again and again during the period of its validity, but in the case of dishonour again he shall have to rely only upon the civil remedy that is available to him under the other provisions of the Act. Unless the provisions of Chapter XVII are interpreted and understood as indicated above, the payee or holder in due course of a cheque can, umpteen number of times, present the cheque again and again during the period of its validity, get it dishonoured again and again, issue notice under Clause (b) of the proviso to Section 138 of the Act on equal number of occasions and keep the draft of complaint waving at the drawer of the cheque like the sword of Damocles without actually filing the same in a court of law thus keeping the drawer in a tantalised condition during the entire period of the validity of the cheque. From the express provisions of the Chapter stipulating the exact periods for giving notice, for repayment of money and for institution of criminal proceedings it does not appear to be the intention of the Legislature to allow the aggrieved party to keep the criminal remedy in an embryonic condition for an indefinite time. Further, it was also contended that the provision under consideration being penal, should be construed strictly and if there is any doubt regarding their scope and applicability it should be resolved in favour of the accused. Relying upon the above principles it was submitted that the view which was adopted in N.C. Kumaresan's case [1992] 74 Comp Cas 868 (Ker) which is in favour of the accused is to be preferred to the view that any number of causes of action can be created and a complaint filed even on the basis of a second or any other subsequent causes of action is also maintainable. Strong reliance was placed by learned counsel for the petitioners on the reasoning and conclusions reached by the Division Bench in N.C. Kumaresan's case [1992] 74 Comp Cas 848 (Ker) in support of his contentions.

12. In Kumaresan's case [1992] 74 Comp Cas 848 (Ker) after analysing the relevant provisions in Chapter XVII of the Act, the learned judges have mainly come to two conclusions. The first is that "more than one cause of action on the same cheque is not contemplated or envisaged". The second is that "institution

of prosecution cannot be made after one month of the cause of action". Regarding the second conclusion there cannot obviously be any quarrel. As a justification for the first conclusion the learned judges have observed further thus (at page 851) :

"If more than one cause of action on the same cheque can be created, the 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. The Legislature cannot be imputed with the intention to subject a drawer of a cheque to repeated prosecutions and convictions on the strength of one cheque."

13. First of all, with respect to the learned judges, we find it difficult to agree with the observation that the possibility of creation of more than one cause of action on the same cheque would result in the same drawer of the cheque being prosecuted and convicted again and again on the strength of one and the same cheque. Even if a number of causes of action can be created legally it may not be possible to prosecute the drawer of the same cheque and convict him again and again on the strength of the same cheque. Though there may arise successive causes of action it may not be possible to file several complaints since a complaint can be filed with reference to a cheque only once. In other words, though it may be possible to commit offences on several occasions with reference to a particular cheque, it may not be possible to file more than one complaint since the complaint must be on the basis of the dishonoured cheque. When once a cheque forms the basis of a complaint and is filed in court it may not be possible to file any fresh complaint on the basis of the same cheque. Further, Section 300 of the Criminal Procedure Code, which is a provision undoubtedly applicable to prosecutions initiated for offences committed u/s 138 of the Act also will definitely bar repeated prosecutions and convictions of the drawer of the cheque on the basis of the same cheque. Article 20(2) of the Constitution of India will also preclude an accused from being prosecuted and punished more than once for the same offence. Even if acquitted in a prosecution, issue estoppel will also bar a fresh prosecution and conviction of the accused for the same offence. As such, in our view, the undesirable consequences which the Division Bench thought would follow if it is held that more than one cause of action can be had on the basis of one and the same cheque, may not follow at all.

14. Secondly, we find that the basic conclusion reached by the learned judges, namely, more than one cause of action on the same cheque is not contemplated or envisaged by the provisions of the Act is also not correct. First of all, we do not find anything in the provisions in Chapter XVII of the Act or in the object and scheme of the provisions which would support such a conclusion. Understanding the provisions in the ordinary sense, we find that the provisions do not justify such a conclusion. It is indisputable that the cheque can be presented for payment till it is honoured. If that be so, it will be perfectly open to the payee or holder in due course to present the cheque for payment even after his failure to

file a complaint on the basis of the first cause of action accrued to him. If the cheque is again dishonoured, it will again be open to the payee or holder in due course to issue a notice demanding payment of the amount due as per the cheque. If the drawer once again fails to satisfy the demand, we find that the wording of Section 138 is wide enough to permit the payee or holder in due course to claim that he has acquired a fresh cause of action if the cheque was presented within the time mentioned in Clause (a) of the proviso to that section. The provisions would also plainly enable the payee to establish all the ingredients of the offence against the drawer in case he files a complaint within the time allowed by Section 142(b) of the Act. As such we are of the view that the above assumption made by the learned judges in N.C. Kumaresan's case [1992] 74 Comp Cas 848 (Ker) is not correct.

15. Deferment of prosecution or even omission to prosecute the offender at the earliest opportunity and availing of a cause of action which accrues to him subsequently may not in any way be considered as an act prejudicial to the interest of the drawer or an act intended to harass or embarrass the drawer of the cheque. If at all, such an act can only be considered as an action advantageous to the drawer who is not in a position to pay. Repeated presentation and creation of fresh causes of action cannot also be considered as an action intended to embarrass or harass the drawer as he can at any time pay and avoid the threat of prosecution effectively if he chooses to do so. So long as the cheque remains unpaid, attempts made to claim payment and to keep alive the criminal remedy to the maximum period by creating a fresh cause of action if possible cannot be considered as tantalising the drawer or keeping a Damocles' sword over him indefinitely to his harassment and misery unjustifiably. We do not find any justification to take such a view so as to hold that creation of successive causes of action is impermissible or that there is an implied bar created by the provisions against the creation of successive causes of action.

16. The only reasonable way to understand the provisions in the light of the object for which they were specifically incorporated in the Act by way of an amendment is that they do permit creation of successive causes of action during the period of the validity of the cheque. We do not find any justification to hold that once a payee or holder in due course fails to file a complaint on the basis of the first cause of action he will forfeit his right to prosecute the drawer of the cheque even if he is able to satisfy all the ingredients of the offence against the drawer and the other conditions to be complied with for filing a complaint. Such a conclusion will be clearly against the plain meaning of the provisions contained in Sections 138 and 142 of the Act and the object for which the said sections are incorporated in the Act. It will have the effect of excluding an act which will amount to an offence as contemplated by the provisions, out of its purview and defeating the object for which the provisions were specifically enacted by way of amendment. It will only help to perpetrate the mischief sought to be prevented by the provisions. If the wording of the provisions would reasonably permit the creation of a second or subsequent cause of action, it may not be legal to restrict

the scope of the section relying on the principle of strict construction of penal statutes especially when it is seen that creation of successive causes of action would only advance the object of the enactment and suppress the mischief which is sought to be prevented by it.

17. Turning to the rule of strict construction of penal statutes it is relevant to note that the said rule was originally evolved to mitigate the rigour of monstrous sentences for trivial offences. The rule exhibits a preference for the liberty of the subject and in a case of ambiguity enables the court to resolve the doubt in favour of the subject and against the Legislature which has failed to express itself clearly. In this connection it is useful to refer to the following observation of Pollock C. B. made as early as in 1864 in *Attorney-General v. Sillem* [1864] 33 LJ Ex 92.

"The distinction between a strict construction and a more free one has, no doubt, in modern times, almost disappeared, and the question now is : What is the true construction of a statute ? If I were asked whether there be any difference left between a criminal statute and any other statute not creating an offence, I should say that in a criminal statute you must be quite sure that the offence charged is within the letter of the law."

18. The following observation in *Craies on Statute Law*, seventh edition, page 531, is also apposite in this connection.

"The distinction between a strict and a liberal construction has almost disappeared with regard to all classes of statutes, so that all statutes, whether penal or not, are now construed by substantially the same rules."

19. Maxwell in his book *Interpretation of Statutes*, eleventh edition, page 254, has this much to say regarding the rule of strict construction of penal statutes :

"The rule of strict construction does not, indeed, require or sanction that suspicious scrutiny of the words, or those hostile conclusions from their ambiguity or from what is left unexpressed, which characterise the judicial interpretation of affidavits, in support of ex parte applications, or of Magistrate's convictions where the ambiguity goes to the jurisdiction. Nor does it allow the imposition of a restricted meaning on the words, wherever any doubt can be suggested, to withdraw from the operation of the statute a case which falls both within its scope and the fair sense of its language. This would be to defeat, not to promote, the object of the Legislature ; to misread the statute and misunderstand its purpose. A court is not at liberty to put a limitation on general words which is not called for by the sense or the objects, of the mischiefs or the enactment, and no construction is admissible which would sanction a fraudulent evasion of an Act."

20. The learned author has summarised the modern trend of construction thus (at page 274) :

"The tendency of modern decisions, upon the whole, is to narrow materially the

difference between what is called a strict and a beneficial construction. All statutes are now construed with a more attentive regard to the language and criminal statutes with a more rational regard to the aim and intention of the Legislature, than formerly . . . The effect of the rule of strict construction might almost be summed up in the remark that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the Legislature which has failed to explain itself. But it yields to the paramount rule that every statute is to be expounded according to its expressed or manifest intention and that all cases within the mischiefs aimed at are, if the language permits, to be held to fall within its remedial influence."

21. The rule has been stated by Mahajan C. J. in *Tolaram Relumal and Another Vs. The State of Bombay*, 498, in similar words :

"... if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature."

22. To the same effect is the observation in *State of Madhya Pradesh Vs. Azad Bharat Finance Co. and Another*, But it is also relevant to note that the application of the rule does not permit the court in restraining comprehensive language used by the Legislature, if the wide meaning is in accord with the object of the statute. The unrestrained application of the rule of strict construction has prompted the learned Chief Justice Marshall to observe that "though penal statutes are to be strictly construed they are not to be construed so strictly as to defeat the obvious intention of the Legislature . . . The intention of the Legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction." (see *United States v. Wiltberger*, 5 Wheat 76 (U. S. 1820)). The principle was neatly formulated by Lord Justice James, who, speaking for the Privy Council, stated :

"No doubt all penal statutes are to be construed strictly, that is to say, the court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words . . . But where the thing is brought within the words, and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair common sense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument. (See *Dyke v. Elliot* [1872] LR 4 PC 184).

23. We find that the above formulation of the principle has been cited with approval by the House of Lords in *London and North Eastern Railway Co. v. Berriman* [1946] 1 All ER 255 and *M. Narayanan Nambiar Vs. State of Kerala*, .

In the last mentioned case, Subbarao J. (as he then was) referring to the Prevention of Corruption Act, 1947, observed that (headnote) :

"the Act was brought in to purify public administration when the Legislature used comprehensive terminology to achieve the said purpose, it would be appropriate not to limit the content by construction when particularly the spirit of the statute is in accord with the words used therein,"

24. In Principles of Statutory Interpretation, fifth edition, page 501, the learned author, G.P. Singh, has, relying upon a large number of Supreme Court decisions, observed thus :

"So language permitting a penal statute may also be construed to avoid a lacuna and to suppress the mischief and advance the remedy in the light of the rule in Heydon's case."

25. The rule in Heydon's case [1584] 3 Co Rep 7a, 7b ; 76 ER 637, which is how well known as "purposive construction" or the "mischief rule", has been adopted verbatim by the Supreme Court in The Bengal Immunity Company Limited Vs. The State of Bihar and Others, 674 :

"... for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered :

1st. What was the common law before the making of the Act,

2nd. What was the mischief and defect for which the common law did not provide,

3rd. What remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth, and

4th. The true reason of the remedy ; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato comodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico." (extract from Heydon's case [1584] 3 Co Rep 7a, 7 b ; 76 ER 637).

26. In the light of the above principles of interpretation discernible from the English, American and Indian decisions, referred to above, we feel that there is no scope for restricting the criminal remedy provided as per Sections 138 and 142 of the Act to the first cause of action or to hold that Section 138 does not permit creation of successive causes of action on the same cheque by applying the rule of strict construction of penal statutes as has been done in N.C. Kumaresan's case [1992] 74 Comp Cas 848 (Ker). We say so because, we do not first of all find any ambiguity in the meaning to be attached to the words used in the provisions so as to hold that there are two equally possible interpretations for the Section. Secondly, we have already found that the wording of Section 138 is clear and wide enough to permit creation of successive causes

of action and that is the only reasonable way in which it can be understood. Such a view would only be in consonance with the object for which the provisions are enacted specifically by way of an amendment. It would also be helpful to suppress the mischief sought to be remedied by the Legislature. The view that the provisions in Section 138 of the Act do not contemplate the creation of successive causes of action will be really against the plain meaning of the section and will also be against the avowed object and purpose of the enactment. Such a view, if taken, will only help to perpetuate the mischief sought to be remedied by the Legislature by incorporating penal provisions in the Act by an amendment. As such we are of the view that the decisions in N.C. Kumaresan's case [1992] 74 Comp Cas 848 ker : [1991] 1 KLT 893 and K. Chellakkannu Nadar Vs. Chenkal M.R. Simon and Another, cannot be approved as correct. The view taken in Mahadevan Sunil Kumar v. Bhadrar [1991] 1 KLT 651 ; [1992] 74 Comp Cas 805 (Ker) is to be approved as correct.

27. We find that the High Courts of Bombay, Calcutta, Andhra Pradesh and Madras have taken the same view after expressing dissent with the view taken in N.C. Kumaresan's case [1992] 74 Comp Cas 848 (Ker) in the decisions in Rakesh Nemkumar Porwal Vs. Narayan Dhondur Joglekar, , Sekhar Gupta and Others Vs. Subhas Chandra Mondal, , Syed Rasool and Sons and Others Vs. Aildas and Company and Another, ; T. Kesavan and another Vs. D. Parvatham, and Manivannan v. Ever King Garments [1995] 83 Comp Cas 473 (Mad). The Punjab and Haryana High Court alone has followed Kumaresan's case [1992] 74 Comp Cas 848 (Ker) in the decisions in K. P. V. Textiles v. M.C. Naresh Chand [1994] 79 Comp Cas 125 and Gulshan Rai v. Darshan Lal [1994] 2 KLT 997 ; [1995] 84 Comp Cas 445 ker. As we have already held that N.C. Kumaresan's case [1992] 74 Comp Cas 848 (Ker) has not been correctly decided, the above decisions of the Punjab and Haryana High Court cannot also be considered as correct.

28. In the view which we have taken, we do not find any merit in the criminal miscellaneous case and the same has only to be dismissed. On the facts also, we find that it is a case where the complainant has not issued any notice as contemplated by Clause (b) of the proviso to Section 138 of the Act with reference to the first dishonour of the cheque. As per letter dated May 10, 1993, the complainant has only claimed bank charges incurred consequent on the dishonour of the cheque and not the amount covered by the cheque. As such it cannot be held that there was a completed cause of action for the payee to file a complaint with reference to the first dishonour.

29. Summarising our conclusion we would hold that N.C. Kumaresan's case [1992] 74 Comp Cas 848 (Ker) has not been correctly decided. There is nothing in the provisions in Chapter XVII of the Act which will preclude the creation of successive causes of action on the basis of one and the same cheque. Section 142(b) only prescribes a period of limitation for filing a complaint with reference to a cause of action already accrued. The effect of the provision is only to bar a

complaint filed on the basis of a cause of action which arose one month prior to the date of filing of the complaint. It cannot be construed as a provision barring the payee or holder in due course from taking necessary actions to complete a fresh cause of action in accordance with law so long as the cheque remains unpaid and filing a complaint on the basis of the fresh cause of action so created notwithstanding the bar against filing a complaint on the basis of the earlier cause of action. There is no reason to think that the Legislature has intended to confine the remedy of prosecution to the first default committed by the drawer in making payment as per the first demand issued under Clause (b) of the proviso to Section 138 and not to any subsequent default committed by the drawer. In our view, it will be unreasonable to attribute any such intention to the Legislature which will have the result of relieving the drawer of a cheque who persists in his default from the criminal liability specifically imposed by the Amending Act with the laudable object of punishing such conduct in order to protect the interest of the payee or holder in due course and to enhance the acceptability of cheques in general in the matter of settlement of liabilities. Successive causes of action may arise on the basis of, one and the same cheque for filing a complaint u/s 142 subject to the restrictions contained in Sections 138 and 142(b) of the Act. Even if successive causes of action arise, only one prosecution and conviction or acquittal is possible in view of Section 300 of the Criminal Procedure Code, 1973, since the complaint is bound to be on the basis of the dishonoured cheque which is bound to be produced in court as the basis for the prosecution. The cause of action may get barred or become ineffective if no complaint is filed in time. So long as the cheque remains unpaid and the payee or holder in due course is able to establish all the ingredients of the offence and satisfy the other requirements of the provisions contained in Sections 138 and 142 of the Act, a complaint will be maintainable in spite of the fact that he has not filed any complaint in time on the basis of one or more causes of action accrued to him earlier.

30. We would accordingly dismiss the criminal miscellaneous case, There will be no order as to costs.