(1993) 08 MAD CK 0058

In the Madras High Court

Case No : Criminal R.C. No. 100 of 1990

T. Annakodi Ammal APPELLANT

Vs

Ethiraj RESPONDENT

Date of Decision : 06-08-1993

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 420

Citation : (1993) LW(Cri) 484

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : Mohanraj for S.W. Kanakaraj and U. Manoharan, for the Appellant; Thiyagarajan for P.R.C. Ponnazhangan and B.T. Arasu, for the Respondent

Judgement

Arunachalam, J.—Petitioner is the private complainant in C.C. No. 9384 of 1989, on the file of VII Metropolitan Magistrate, Georgetown, Madras. She preferred her complaint on 25.11.1989 before the trial Magistrate, alleging that the Respondent had committed offences punishable u/s 138 of the Negotiable Instruments Act and Section 420 I.P.C. She had alleged, that on 15.4.1989 Respondent had handed over to her two cheques for Rs. 10,000/- and Rs. 5,000/- drawn on State Bank of Saurashtra, for the discharge of his liability, as detailed in the complaint. Both the cheques were presented for encashment by the Petitioner through Indian Overseas Bank, Royapuram, soon thereafter, both the cheques were returned by the Banker, once on 10.4.1989 with an endorsement, "Funds expected, present again" and again on 12.4.1989 with an endorsement "refer to drawer". Petitioner did not choose to issue any notice to the Respondent soon after the return of both the cheques by the Banker on 10.4.1989 and 12.4.1989. However, both the cheques were presented over-again for encashment on 22.9.1989 and they were returned on 25.9.1989 with a similar endorsement "refer to drawer". It was after this return that the Petitioner forwarded a notice dated 30.9.1989 to the Respondent, who had received it on 16.10.1989. A reply was issued on 26.10.1989. Since the Respondent did not honour his commitment, impugned complaint was filed within the period of limitation contemplated u/s 142(b) of the Negotiable Instruments Act.

2. Sworn statement of the Petitioner was recorded by the learned Magistrate on 25.11.1989. Thereafter, the complaint was dismissed under S. 203 Cr.P.C., on the ground that even after the first return on 12.4.1989, Petitioner ought to have taken steps by issuing a notice to the Respondent and thereafter preferred a complaint, within 30 days as contemplated u/s 142 (b) of the Act. It was further found by the learned Magistrate, that second presentation of the same cheques cannot be allowed and it was a ruse intended to avoid limitation bar.

3. The sustainability of the order of dismissal, is the only question canvassed in the this revision. Petitioner''s counsel, on the basis of certain decided cases, contended that a second presentation of the cheque was possible, so long as it was within a period of six months from the date on which it was drawn or within the period of its validity, whichever was earlier. He also argued, that it was the usual commercial practice to present cheques over again, even after their initial return. He urged that limitation u/s 142(b) of the Act can arise only after the drawer of the cheque fails to make payment of the amount within fifteen days of the receipt of the notice issued u/s 138 (b) of the Act.

4. Learned Counsel appearing on behalf of the Respondent, had no specific arguments to advance, but submitted that the whole matter was left to the judicial discretion of this Court.

5. I have carefully considered the submissions made by Petitioner''s counsel. Except an infinitesimal discordant note, overwhelming judicial pronouncements tend to support the plea of Petitioner''s counsel. If we take note of the words found in Section 138(a) of the Act, there appears to be no limitation as to the number of presentations, that could be made in respect of a cheque, except that such presentation to the Bank will have to be made within a period of six months from the date on which it was drawn or within the period of its validity, whichever was earlier. If in a given case, after the first return of the cheque with and endorsement "refer to drawer", the payee or holder in due course, makes in writing to the drawer of the cheque, within fifteen days of the receipt of information by him from the Bank regarding the return of the cheque as unpaid, and the drawer of such cheque fails to make the payment to the payee or as the case may be to the holder in due course of the cheque within fifteen days of the receipt of the said notice, and does not even plead for representation within validity period, then forthwith the provision u/s 142 of the Act will come into operation. This will purely be a question of fact. We cannot also overlook that mere presentation of the cheque or its return do not penalties the drawer of the cheque, but affords him an opportunity to make the payment on demand.

6. On instant facts, first time when the cheque was presented before the Banker, it was returned with an endorsement "funds expected, present again", obviously only under the advise of the drawer on this endorsement, it would be odd to

expect the Petitioner to have issued the statutory notice and proceeded with her complaint, without affording another opportunity to the drawer of the cheque, to honour his commitment. The prime object of introducing Section 138 of the Act, is to afford sufficient opportunity to the drawer, to honour his commitment, within the statutory period, failure of which will end in penalty being imposed on him. While construing the provisions of this Act, the object behind it cannot be overlooked. In the instant case, after the first and second returns with endorsements "funds expected, present again" and "refer to drawer", Petitioner did not choose to issue a demand notice as contemplated u/s 138(b) of the Act. As long as the second presentation of the cheque does not get barred in view of Section 138(a) of the Act, it cannot be held, that in no case the second presentation of the cheque can be made, and the cause of action can arise only on the first presentation of the cheque and its return.

7. As has been observed in some decided cases, it is common knowledge, that in commercial practice cheques may be presented any number of times within the period of its validity. The object is to collect the funds which form part of the cheques, rather than attempting to penalise the drawer of the cheque even on its first return.

8. Janarthanam, J., In K.V. Iyer, Proprietor, Reapwel Consultancy services v. Chitra & Co. (1990 (2) MWN (Crl) 47) held that presentation of a cheque for the second time at the request of the accused was permissible. It cannot be stated that the cheque dishonoured when presented for the second time will not give rise to a cause of action to prefer a complaint which has been filed within the statutory period from the date of cause of action namely the date on which the cheque was presented for the second time.

9. Usha Mehra, J. of Delhi High Court in Madan Mohan v.K.M. Menon (1993 I BC 185) stated, that the scheme of Sections 138 and 142 of the Act showed, that the cheque can be presented to the bank within a period of 6 months from the date of its issuance or within period of its validity whichever was earlier. As I have observed earlier, learned Judge has further stated that Cl.(a) of proviso to Section 138 does not lay down as to how many 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, or its validity, whichever was earlier. As rightly observed by Usha Mehra, J., legislature could not have intended, that on the first default the drawer of the cheque should be dragged to litigation. It is not uncommon, that in commercial transactions, quite often the drawer of the cheque requests the drawee to represent the cheque over again, in order to keep cordial relationship in business transaction, for, it is not unusual that paucity of funds, atleast for a temporary period, do arise.

10. To reiterate Ss. 138 and 142 of the Act taken together clearly provide as to when the cause of action would arise. It arises only when a notice in writing is given within fifteen days of the receipt of the information by the payee or the holder of the cheque from the Bank regarding return of the cheque as unpaid,

and non-compliance with the demand made, within 15 days of the receipt of the notice. Cause of action is not mere presentation of cheque, which can of course be the base, for the cause.

11. A Division Bench of Andhra Pradesh High Court in Syed Rasool and Sons and Others Vs. Aildas and Company and Another, has held, that 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 was earlier. Thereafter, the process of issuing notice will arise. It is possible to conceive that the person who had issued the cheque may approach the payee in whose favour the cheque was issued and convince him that he will pay the amount or arrange for the same, with a request for postponement of presentation within the period of validity of the cheque.

12. There is no prohibition for presentation of the cheque any number of times, within its validity period because the presentation may be, most of the times, at the request of the drawer, either orally or in writing. The right to present the cheque within the six months period is not taken away, since that right has already been given in law to the payee, in whose favour the cheque has been given. There cannot be discordant note, that only one single action can arise, after complying with the provisions of Section 138 of the Act. It then leads to limitation specified u/s 142 of the Act. The Andhra Pradesh High Court, in the case referred to above, has taken note of the case law available on the subject. Pratap Singh, J. in N.W. Ravichandran v. Vellaiyappan 1992 M.L.J. (Cri) 618, has also taken a similar view. I am in entire agreement with Janarthanam, J., and Pratap Singh, J., that there is no bar for presentation of a cheque for a second time to the Banker, or even more, within the specified period though the cause of action for preferring a complaint can arise only once, after issue of statutory notice and non-compliance of the demand, all within the periods prescribed. The impugned order can neither be sustained in law nor on facts. It shall stand set aside. The matter is remitted back to the trial Magistrate, to dispose of the complaint of the Petitioner, in accordance with law. This revision is allowed.