

(1993) 08 MAD CK 0030

In the Madras High Court

Case No : Criminal Revision Case No. 100 of 1990. Criminal Revision Petition No. 100 of 1990

T. Annakodi Ammal

APPELLANT

Vs

K. Ethiraj

RESPONDENT

Date of Decision : 06-08-1993

Acts Referred:

COMPANIES ACT, 1956 — Section 433
Criminal Procedure Code, 1973 (CrPC) — Section 293
Negotiable Instruments Act, 1881 (NI) — Section 138, 142
Penal Code, 1860 (IPC) — Section 420

Citation : (1994) 80 CompCas 870

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Judgement

Arunachalam J.

1. The petitioner is the private complainant in C. C. No. 9364 of 1989, on the file of VIIth Metropolitan Magistrate, George Town, Madras. She

preferred her complaint on November 25, 1989, before the trial Magistrate, alleging that the respondent had committed offences punishable u/s

138 of the Negotiable Instruments Act and section 420 of the Indian Penal Code. She had alleged that on April 15, 1989, the respondent had

handed over to her two cheques for Rs. 10,000 and Rs. 5,000 drawn on the 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 the Indian Overseas Bank, Royapuram, soon

thereafter. Both the cheques were returned by the banker, once on April 10, 1989, with an endorsement, ""funds expected, Present again"" and

again on April 12, 1989, with an endorsement ""refer to drawer"". The petitioner

did not choose to issue any notice to the respondent soon after the return of both the cheques by the banker on April 10, 1989, and April 12, 1989. However, both the cheques were presented over again for encashment on September 22, 1989, and they were returned on September 25, 1989, with a similar endorsement ""refer to drawer"". It was after this return that the forwarded a notice dated September 30, 1989, to the respondent, who had received it on October 16, 1989. A reply was issued on October 26, 1989. Since the respondent did not honour his commitment, the impugned complaint was filed within the period of limitation contemplated u/s 142(b) of the Negotiable Instruments Act.

2. The sworn statement of the petitioner was recorded by the learned Magistrate on November 25, 1989. Thereafter, the complaint was dismissed u/s 293 of the Criminal Procedure Code, on the ground that even after the first return on April 12, 1989, the 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 the second presentation of the same cheque cannot be allowed and it was a ruse intended to avoid the bar of limitation.

3. The sustainability of the order of dismissal is the only question canvassed in this revision. The 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 the petitioner's counsel. Except an infinitesimal discordant note, overwhelming judicial pronouncements tend to support the plea of the 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 an endorsement ""refer to drawer"", the payee or holder in due course, makes a demand for payment of the said amount, by giving notice 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 the validity period, then forthwith the provision u/s 433 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 penalise the drawer of the cheque, but affords him an opportunity to make the payment on demand.

6. On the 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 advice 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 endorsement ""funds expected, present again"" and ""refer to drawer"", the 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. It 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 their validity. The object is to collect the funds which form part of the cheques, rather than attempt to penalise the drawer of the cheque even on its first return.

8. Janarthanam J. in *K. V. Iyer v. Chitra and Co.* [1990] 2 MWN (CrI.) 47 held that the presentation of a cheque for the second time at the request of the accused was permissible. It cannot be stated that 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 the Delhi High Court in *Madan Mohan v. K. M. Menon* [1993] 1 BC 185; [1994] 79 Comp Cas 710 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 six months from the date of its issuance or within the period of its validity, whichever was earlier. As I have observed earlier, the learned judge has further stated that clause (a) of the 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 or its validity, whichever was earlier. As rightly observed by Usha Mehra J. the 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 payee to represent the cheque over again, in order to keep cordial relationship in business transaction, for it is not unusual that paucity of funds, at least for a temporary period, does arise.

10. To reiterate, sections 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. The cause of action is not mere presentation of cheque, which can of course be the base for the cause.

11. A Division Bench of the Andhra Pradesh High Court in Syed Rasool and Sons and Others Vs. Aildas and Company and Another, ; had 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-month 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 a 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

Ravichandran (N. W.) v. Vellaiyappan [1992] MLJ (CrL.) 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 with 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.