

(2010) 01 SC CK 0020

In the Supreme Court Of India

Case No : Criminal Appeal No. 46 of 2010 (Arising out of Special Leave Petition (Criminal) No. 6676 of 2008) and Criminal Appeal No. 47 of 2010 (Arising out of S.L.P. (Criminal) No. 6593 of 2008)

Tameeshwar Vaishnav

APPELLANT

Vs

Ramvishal Gupta

RESPONDENT

Date of Decision : 08-01-2010

Acts Referred:

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

Citation : (2010) 1 ACR 390 : AIR 2010 SC 1209 : (2010) AIRSCW 3330 : (2010) AIRSCW 3543 : (2010) AIRSCW 6877 : (2010) AIRSCW 828 : (2010) 1 BC 357 : (2010) CLT 481 : (2010) CriLJ 1237 : (2010) 1 JT 199 : (2010) 2 MPHT 481 : (2010) MPLJ 7 : (2010) 1 NCC 595 : (2010)

Hon'ble Judges : G. S. Singhvi, J;Altamas kabir, J

Bench : Division Bench

Advocate : Rajesh Pandey, Mahesh Pandey and Mridula Ray Bharadwaj, for the Appellant; V. Sridhar Reddy, A.S. Rao and Ram Swarup Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Altamas Kabir, J.—Delay of 31 days and 39 days in re-filing the Special Leave Petitions is condoned.

2. Leave granted.

3. The short point for decision in these Appeals is whether after the notice issued under Clause (b) of Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act"), is received by the drawer of the cheque, the payee or holder of the cheque, who does not take any action on the basis of such notice within the period prescribed u/s 138 of the Act, is entitled to send a fresh notice in respect of the same cheque and, thereafter, proceed to file a complaint u/s 138 of the Act.

4. In S.L.P.(Crl.) No. 6676 of 2008 arising out of Criminal Case No. 399 of 2006

pending before the Additional Chief Judicial Magistrate, Khairagarh, the Respondent had filed a complaint u/s 138 of the Act, for dishonour of a cheque dated 16th March, 2006, bearing No. 0864961 for Rs. 40,000/- drawn on the Bank of Maharashtra, Khairagarh Branch, in favour of the Respondent. SLP (Crl.) No. 6593 of 2008 is directed against the judgment of the High Court dated 27th March, 2008, in Crl. Revision No. 130 of 2006 arising out of Criminal Case No. 339 of 2006 pending with the Additional Chief Judicial Magistrate, Khairagarh, in respect of a similar cheque dated 20th March, 2006, bearing No. 0864962 amounting to Rs. 40,000/- drawn on the Bank of Maharashtra, Khairagarh Branch, in favour of the Respondent. As stated hereinabove, both the said cheques were dishonoured on the ground of insufficient funds. The cheque issued on 20th March, 2006, bearing No. 0864962 was dishonoured on 22nd March, 2006, on the ground of insufficient funds. Similarly, cheque bearing No. 0864961 dated 16th March, 2006, was dishonoured on 16th March, 2006. Consequently, the Respondent issued notices as contemplated under Clause (b) of the proviso to Section 138 of the Act asking the Appellant to make payment of the cheque amounts within 15 days. Although, the notice was duly served upon the Appellant, the Respondent did not take any steps to file the complaint within the period prescribed in Section 142 of the Act. On the other hand, the Respondent sent a second notice to the Appellant in respect of the two cheques on 7th June, 2006, and, ultimately, when no response was received to the same, he filed two separate complaints before the learned Additional Chief Judicial Magistrate, Khairagarh, District Rajanandgaon, Chhattisgarh, on which process was issued by the learned Magistrate after recording the statement of the respondent-complainant.

5. Against such order issuing process on both the complaints, the Appellant filed Criminal Revision Nos. 130 and 131 of 2006 in the Court of the Additional Sessions Judge, Khairagarh, District Rajanandgaon, on 21st November, 2006. On 19th March, 2007, the learned Additional District Judge, Khairagarh, dismissed both the Revision Applications holding that the grounds raised therein could be decided after evidence was led by the parties.

6. On 15th May, 2007, the Appellant filed Crl. Misc. Petition Nos. 177 of 2007 and 178 of 2007 before the Chhattisgarh High Court u/s 482 Cr.P.C. for quashing the order passed by the Additional Sessions Judge, Khairagarh, on 19th March, 2007. The High Court ultimately dismissed both the Petitions by the orders impugned in these Appeals.

7. On behalf of the Appellant, it was contended that the learned Magistrate had erred in taking cognizance on the complaints filed by the Respondent, since the complaints stood barred under the provisions of the proviso to Section 138 of the Act. It was urged that when the complainant- respondent did not take any action on the basis of the first notice issued on 30th March, 2006, a second notice in regard to the self-same cheque was barred under the proviso to Section 138 of the Act. In support of his said submission, the learned Counsel firstly referred to

and relied on the decision of this Court in *Sadanandan Bhadran Vs. Madhavan Sunil Kumar*, wherein this Court held that the cause of action to file complaint on non-payment despite issue of notice, arises but once. Another cause of action would not arise on repeated dishonour on re-presentation. Learned Counsel pointed out that this Court also held that while the payee was free to present the cheque repeatedly within its validity period, once notice had been issued and payments not received within 15 days of the receipt of the notice, the payee has to avail the very cause of action arising thereupon and file the complaint. Dishonour of the cheque on each re-presentation does not give rise to a fresh cause of action. Taking note of the amendment to Section 142(b) of the Act, this Court also held that the complaint would have to be filed within one month from the day immediately following the day on which the period of 15 days from the date of receipt of the first notice by the drawer expires.

8. Learned Counsel then referred to another decision of this Court in *Prem Chand Vijay Kumar Vs. Yashpal Singh and Another*, wherein the view expressed in *Sadanandan Bhadran's* case (supra) was reiterated. Learned Counsel submitted that in view of the aforesaid decisions of this Court which authoritatively explained that cause of action arises only once on the issuance of notice upon dishonour of the cheque and receipt thereof by the accused, the learned Magistrate had erred in law in taking cognizance on the basis of the second notice whereas the cause of action had arisen under the first notice dated 30th March, 2006, which clearly indicates that the complaint filed on 10th July, 2006, was well outside the period of limitation prescribed in the proviso to Section 138 of the Act. Learned Counsel submitted that the subsequent order passed by the High Court affirming the order of the Magistrate issuing process suffers from the same vice and both the orders were, therefore, liable to be set aside.

9. The submissions made on behalf of the Appellant were vehemently opposed on behalf of the Respondent on the ground that having regard to the assurance given by the Appellant to the Respondent and the request made to present the cheque for the second time, even after issuance of the first notice, it must be held that the delay, if any, in filing the complaint had been condoned by the learned Magistrate in keeping with the proviso to Section 142(b) of the Act.

10. Learned Counsel submitted that the decisions cited on behalf of the Appellant had been subsequently considered by this Court in *S.L. Construction and Another Vs. Alapati Srinivasa Rao and Another*, in which the decisions of this Court in *Sadanandan Bhadran's* case (supra) and *Prem Chand Vijay Kumar's* case (supra), had been noted and considered.

11. Learned Counsel submitted that in view of the promise held out by the Appellant and his request to present the cheque for the second time, the Respondent had refrained from taking any action on the basis of the first notice which was the cause of the delay in making the complaint. Upon issuance of process, it must be held that the Court was satisfied that there was sufficient cause for making the complaint after the prescribed period.

12. Learned Counsel urged that having regard to the above, no interference was called for with the order of the learned Magistrate taking cognizance or the order of the High Court affirming the said order.

13. We have given our anxious thought to the submissions made on behalf of the respective parties, having regard to the apparently different views expressed in Sadanandan Bhadran's case (supra), Prem Chand Vijay Kumar's case (supra) and the latest decision in S.L. Construction's case (supra).

14. On careful scrutiny of the decision in S.L. Construction's case (supra), it would appear that the facts on the basis of which the said decision was rendered, were different from a case of mere presentation and dishonour of the cheque after issuance of notice under the proviso to Section 138 of the Act. While the decision in Sadanandan Bhadran's case (supra), clearly spells out that a cheque may be presented several times within the period of its validity, the cause of action for a complaint u/s 138 of the Act arises but once, with the issuance of notice after dishonour of the cheque and the receipt thereof by the drawer. The same view has been reiterated in Prem Chand Vijay Kumar's case (supra). The only distinguishing feature of the decision in S.L. Construction's case (supra) is that of the three notices issued, the first two never reached the addressee. It is only after the third notice was received that the cause of action arose for filing the complaint. In effect, the cause of action for filing the complaint in the said case did not arise with the issuance of the first two notices since the same were never received by the addressee.

15. The provisions of Section 138 and Clauses (a), (b) and (c) to the proviso thereof indicate that a cheque has to 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 (b) indicates that the payee or the holder in due course of the cheque, has to make demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid and Clause (c) provides that if the drawer of the cheque fails to make the payment of the said amount of money to the payee or to the holder in due course of the cheque within 15 days of receipt of the said notice, the payee or the holder of the cheque may file a complaint u/s 142 of the Act in the manner prescribed.

16. In the instant case, it is clear that the first notices were received by the Appellant on 14th June, 2006, whereas the complaints were filed on 10th July, 2006. It must, therefore, be held that the complaints were filed beyond the period of limitation and the learned Magistrate erred in taking cognizance on the complaints filed on the basis of the second notices issued on 7th June, 2006. Similarly, the High Court was also wrong in affirming the order of the learned Magistrate.

17. The Appeals must, therefore, succeed and are, accordingly, allowed. The

orders of the learned Magistrate dated 13th July, 2006 and 17th July, 2006, respectively, taking cognizance on the Criminal Complaint Nos. 339 and 399 of 2006 along with the orders of the High Court impugned in these appeals, are set aside.