

(2007) 02 DEL CK 0169
In the Delhi High Court
Case No : Criminal Rev. P. 189 of 2003

Tide Water Oil Co. (I) Ltd.

APPELLANT

Vs

Greaseoil (I) and Another

RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2007) 2 ALD(Cri) 27 : (2007) 2 BC 531 : (2007) 139 DLT 32 : (2007) 94 DRJ 611 : (2007) 1 ILR Delhi 113

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Ranjan Mukherjee, for the Appellant; P.M. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The petitioner has invoked the revisional jurisdiction of this Court in respect of an order dated 13.9.2002 by which the respondent was discharged and the complaint preferred by the petitioner alleging commission of offences under Sections 138/142, was dismissed.

2. The petitioner's case is that 3 cheques for the sum of Rs. 33,74,732/- were issued on 31.8.1998 by the respondent. They were presented to the bank on 3.9.1998. It is contended that after presentation on 4.9.1998 the petitioner received a letter from the complainant requesting it not to present the cheques and further requesting that they be presented after 30.9.1998. The cheques had been presented; they were returned dishonoured.

3. The petitioner caused a legal notice to be issued on 17.9.1998. Thereafter the cheques were again presented but returned, dishonoured. Two notices dated 23.10.1998 and 6.11.1998 were issued subsequently to the respondent/drawer. Thereafter claiming that the respondent had defaulted in its legal obligations to pay the amounts the complaint proceedings were initiated.

4. The complaint of the petitioner admittedly did not disclose the issuance of the notice dated 17.9.1998. It was adverted to and mentioned in the evidence of the respondent/accused who produced the photocopy of the same. The circumstances under which a notice was served was also adverted to in the course of evidence before the trial court. After considering the materials on record, the trial court formed the opinion that issuance of notice by the petitioner on 17.9.1998 disclosed the intention not to act upon the letter dated 4.9.1998 of the respondent and proceed further. On that basis, and on an application of law laid down by Supreme Court in *Sadanandan Bhadran Vs. Madhavan Sunil Kumar*, , the court held that the complaint was time barred as it was filed on 2.12.1998, that is much beyond the period of 30 days, reckoned from 17.9.1998.

5. Mr. Ranjan Mukherjee appearing for the petitioner submitted that the requirement of Section 138(c) read with Section 142 is not only issuance of notice but its receipt. He elaborated the submission to say that after the delivery of judgment rejecting the complaint, the petitioner discovered that in fact the notice dated 17.9.1998 was not received by the respondent accused and that the same had been received with the remark refused. Counsel placed reliance on a copy of the said document and submitted that the originals are with the petitioner and can be produced in the court.

6. Counsel submitted that this Court ought to take notice of the fact that without receiving the notice, it was not open to the respondent to put forward the submission that the complaint was time barred. It was submitted that if this circumstance is kept in mind, the basis of the impugned order cannot be sustained; the limitation has to Therefore necessarily reckon from 23.10.1998 when the notice was admittedly issued.

7. Learned Counsel for the respondent took me through the order of the trial court, particularly the portion in which a specific query was put to the authorized representative of the complainant about the existence of the notice dated 17.9.1998. Counsel also contended that the court took care to enquire from the complainant whether the notice had been stolen to which the answer was in the negative. In these circumstances the court, it was submitted rightly concluded that the complaint was time barred since it should have been, (but was not) filed within 30 days from issuance of the notice dated 17.9.1998.

8. Counsel also contended that the present proceedings ought not to be entertained on the basis of facts which were not presented before the trial court or even adverted to in the course of proceedings. He submitted that during the pendency of proceedings an application for recall of summoning order on the basis of the pre-existing law was moved. In the reply to the said application the petitioner did not anywhere advert to the loss of the notice or the fact that the same was received back "unserved" or "refused".

9. It is by now well settled that Section 138 of the Negotiable Instruments Act prescribes a special procedure, for speedy recovery of amounts due wherever

Negotiable Instruments /cheques are dishonoured. The parliamentary intention in prescribing such a procedure is to ensure that there is no delay in the recovery of amounts due in commercial transactions. The recourse to such proceedings presupposes strict adherence to the time limit prescribed that is (1) issuance of notice within the time prescribed in the provision (Section 138(b)) "earlier it use to be 15 days" after the Amendment Act of 2002 it is 30 days; (2) filing of a complaint within 30 days after the expiration of 15 days of the issuance of notice.

10. The above two stage procedure is to enable the drawer of the cheque to make good the payment. In the event the payee chooses his remedy and seeks to invoke provisions of the Act, he is, as stated earlier under a duty to strictly adhere to the time limits. The judgment in *Sadanandan Bhadran v. Madhavan Sunil Kumar*'s case (*supra*) is an authority to the proposition that the cause of action accrues but once. The court had ruled that though in the course of commercial transactions, parties would have the flexibility of presenting cheques more than once in the event of dishonour, the choice of approaching the courts is fixed from the date the notice is issued. Thus the cause of action to accrue to approach the court and legal notice u/s 138 is issued and the entire time schedule would be determined by that conduct. This legal position has been reinforced in the decision reported as *Prem Chand Vijay Kumar Vs. Yashpal Singh and Another*, . The law declared is thus clear and unambiguous; there cannot be two occasions for a party to approach the court.

11. In this case the petitioner did not admittedly disclose the issuance of the previous notice dated 17.9.1998. That it issued it is not in dispute it has emerged from the evidence. The Explanation sought to be given in the course of revision proceedings namely that the notice was not received, was a detail that was otherwise available to the petitioner in the entire length or duration of the trial proceedings. As is evident from a reading of the trial court's order, care was taken to elicit specific answers about the existence and receipt of the same notice as well as whether it was even stolen. After being satisfied that the petitioner was entitled to proceed on the basis of the dishonour of the cheques on 4.9.1998 and Therefore caused notice to be issued on 17.9.1998, the court, in my opinion rightly, concluded that the complaint was presented beyond the period of limitation.

12. Although counsel for the petitioner urged that the original of the document namely the unserved notice was with it and it could be produced, I am of the opinion that this is not an appropriate case where the court should exercise its exceptional powers to intervene in a matter where the trial proceeded after an elaborate appreciation of evidence and by a reasoned order. I see no jurisdictional infirmity or legal impropriety in the order under challenge, requiring correction u/s 397, Cr. P.C.

13. The petition is accordingly dismissed, without any order as to costs.