
(2000) 10 DEL CK 0013

In the Delhi High Court

Case No : Criminal Misc (M) No"s. 1432, 1569, 1206 of 2000, 1569, 1574, 1575, 1579, 1580, 1581, 1582, 1583/99

United Ink and Varnish Co. Ltd.

APPELLANT

Vs

State of Ors.

RESPONDENT

Date of Decision : 20-10-2000

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2001) 2 AD 783 : (2001) 89 DLT 367 : (2001) 57 DRJ 402 : (2001) 2 RCR(Criminal) 95

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : Mr. A.K. Singla, Mr. Anil Arora, Mr. Rajiv Awasthi, Ms. Seema Gulati and Mr. Arun Aggarwal, for the Appellant; Mr. Pawan Bahl, for the Respondent

Judgement

Dalveer Bhandari, J.—As common questions of law are involved in these petitions, Therefore, all these petitions are disposed of by this judgment. The detailed facts of only one petition Crl.M.(M).No.1432/2000 are recapitulated.

2. Respondent No.2 (M/s Howard Ink Co.(P) Ltd.) and respondent No.3 (Shri S.R.Narula, the Managing Director of M/s Howard Ink Co. Pvt.Ltd.) issued cheque dated 31.1.2000 in the sum of Rs.6,75,000/- which was dishonoured on presentation. Thereafter the petitioner sent a statutory notice. Despite the notice dated 9.3.2000 when the payment was not made, the petitioner (United Ink. & Varnish Co. Ltd.) filed a complaint u/s 138/141 of the Negotiable Instruments Act. On 28.4.2000, the case was adjourned by the court for recording of the complainant's evidence for 2.4.2001.

3. The main grievance of the petitioner in this petition is that the entire purpose of filing the complaint is defeated, if the trial court gives an 11 months long date for recording of the complainant's evidence. In another matter Madan Agarwal vs. Auric Agencies (P) Ltd. - Crl.M.(M).No.3839/2000 (pertaining to a complaint u/s 138 of the Negotiable Instruments Act) the trial court has adjourned the case

for a period of 19 months for further proceedings. This petition is filed primarily to bring to the notice of this court that the trial courts are not adjudicating these complaints expeditiously and consequently the entire legislative purpose and object of incorporating these provisions stand defeated.

4. The provisions of the penalties in case of dishonour of cheques for insufficient funds were inserted in Chapter XVII comprising of Section 138 to 142 with effect from 1.4.1989 by the Banking, Public Financial Institutions & Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988). This chapter has been inserted with a view to enhance the acceptability and credibility of cheques in settlement of liabilities by making the drawer liable for the penalties, in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason that it exceeds arrangement made by the drawer with adequate safeguards to prevent harassment of honest drawers.

5. Relevant provisions of the said Act are reproduced. Section 138 of the Negotiable Instruments Act, 1988 reads as under:

138. Dishonour of cheque for insufficiency, etc., of funds in the account.- Where any cheque drawn by a person on any account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque or with both:

Provided that nothing contained in this section shall apply unless -

(a) the cheque has been 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.

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a 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

(c) the drawer of such cheque fails to make the payment of the said amount of money 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.

Explanation.- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

6. The cognizance of offence u/s 138 is to be taken by the court of M.M., notwithstanding anything contained in the Code of Criminal Procedure.

7. Section 142 of the Act reads as under:

142. Cognizance of offences.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) no court shall take cognizance of any offence punishable u/s 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause-of-action arises under clause (c) of the proviso of Section 138;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable u/s 138.

8. Mr.A.K.Singla, learned counsel for the petitioners, submitted that adjourning the complaint u/s 138/142(1) of the Negotiable Instruments Act, 1988 for a period of about one year for examining the complainant defeats the very purpose of incorporating these sections. Learned counsel for the petitioner in support of his submissions placed reliance on the judgment of the Apex court delivered in V.M. Shah Vs. State of Maharashtra and another, . In the said judgment the Apex court relied on the earlier judgment of the Supreme Court M.S. Sheriff Vs. The State of Madras and Others, The court observed in the said judgment as under:

"Public interest demands that criminal justice should be swift and it should ensure that the guilty is punished while the events are still fresh in public mind and that the innocent should be absolved as early as possible is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust. This, however, is not a hard and fast rule. Special considerations obtaining in any particular case may make some other course more expedient and just. Therefore, each case has to be considered on its own facts."

9. It may be pertinent to mention that prior to the enactment of The Negotiable Instruments Act, 1988 the offences of dishonour of cheques, were dealt with by Sections 420 read with Section 417 IPC. The enactment of the Banking, Public Financial Institutions & Negotiable Instruments Laws (Amendment).Act, 1988, made the dishonour of cheques implicate an offence punishable u/s 138 of the Act. For the credibility and trustworthiness of the business and trade in the society, it is imperative to have a speedy disposal of the offences of this nature. This was the sole purpose of incorporating these new provisions, otherwise, these offences were being tried earlier (before the said amendment of 1988) u/s 420 read with Section 417 IPC. Their Lordships of the Supreme Court in a case State of Gujarat Vs. Mohanlal Jitmalji Porwal and Another, observed as under:

" The entire Community is aggrieved if the economic offenders who ruin the

economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest."

10. It may be pertinent to mention that the legislation itself provided adequate safeguards for an accused whose cheque had been dishonoured. Before the complaint is filed a statutory notice of 15 days is required to be given to the accused for making the payment, so that the accused is not caught unaware. The statute provides him another opportunity to pay the outstanding amount of the dishonoured cheque. Even thereafter if the amount of dishonoured cheque is not paid, then the complainant is given liberty to file a complaint. The legislature has provided sufficient safeguard to the accused. Therefore, after the complaint is filed before the court the same must be disposed of as expeditiously as possible in consonance with the underlying aim, object and intention of the legislature in enacting the said provisions. The question which arises is that how can the goal of expeditious disposal of these complaints be accomplished?

11. It is submitted that along with the complaint, the original cheque, original memo issued by the bank, legal notice, post receipt regarding the service of notice can be filed. After recording the statement of the complainant, the statements of other formal witnesses can be taken by the Court by way of affidavits as per Section 296 of the Code of Criminal Procedure which is similar to Section 30(c) and Order XIX Rules 1 & 2 of the Code of Civil Procedure. After recording of the complainant's evidence and perusing other affidavits/evidence, the Magistrate must decide the question of issuing the process to the accused. Experience reveals that a majority of cases finally come to an end at the stage of summoning of the accused. The accused either pays the outstanding amount or otherwise enters into some kind of arrangement with the complainant. It is submitted that after the summoning order is passed, within a reasonable time the trial must be concluded. By expeditious disposal of the complaints not only would the underlying object of incorporating these provisions be achieved but most of the avoidable litigations may not even be initiated. This would avoid multiplicity of litigation because in most cases the parties are compelled to approach the civil courts for recovery of the same amount. Enormous time of the court is wasted because of the multiplicity of the litigation. Section 260 Cr.P.C. provides for a summary trial of certain cases. Offences u/s 138 of the N.I.Act also falls in the category of Section 260(1)(i) Cr.P.C.

12. These are various stages before the complaint filed u/s 138 is finally adjudicated:-

- I. Filing of complaints with CMM/ACMM.
- II. Marking of the complaint to the concerned Metropolitan Magistrate.
- III. Fixing a date for hearing of the complaint by the concerned M.M.
- IV. Recording of the statement of the complainant and other witnesses.
- V. Adjourning the case for arguments on the recorded statements.
- VI. Adjourning the case for orders for summoning of accused.
- VII. Appearance of accused and releasing him on bail.
- VIII. Hearing of application generally moved for recalling the summoning orders.
- IX. Asking the accused of his guilt or otherwise by a Notice u/s 251 Cr.P.C.
- X. On his not pleading guilty to again examine the complainant and witnesses, to permit their cross examination and recording the statement of accused u/s 281 Cr.P.C. and to ask him to lead his defense evidence.
- XI. Announcing the order/judgment or the compromise at this or earlier stage.

13. The stages 1 to VI can be completed within a week by insisting on the presence of the complainant with the dishonoured cheque/cheques, bank return memo and the legal notice with the proof of service on the accused. Stages VII to XI must also be completed at the earliest. It is submitted that the complainant should be orally examined with reference to the written complaint with a view to satisfy that the cheque was presented within 6 months, the notice was served in time and no payment was made within 15 days of the demand notice. The Magistrate should issue process on this oral examination by passing a short order that he has examined the complainant on oath with reference to the averments in the complaint and on the basis of the documents relied, he is satisfied that by not paying the amount despite demand (stage after dishonour of the cheque), the accused deemed to have committed an offence u/s 138 N.I.Act and he should be summoned to explain why he should not be penalised? The officials of the bank to prove the accounts need not be examined orally as there is, at this stage. The Courts can accept their affidavits by way of evidence and on the request of the accused they can be directed to appear for the cross examination:

13. The court in *Shamsher Singh, Inspector vs. H.K.S.Malik AD&SJ, Delhi* reported as 1982 CrI.L.J. 167 observed that the words "at once" appearing in Section 200 of the old Code have been omitted in the present Section 200, there can be no doubt about the legislative intendment that the examination of the complainant should be recorded at the earliest possible opportunity.

14. The court in *Leitanthem Bidhu Singh & Ors. vs. Khangjrakpam Ibobi Singh & Ors.* reported as AIR 1969 Man 3 observed that u/s 510A, the evidence of any person whose evidence is of a formal character may be given by affidavit and may, subject to all just exceptions, be read in evidence in any inquiry, trial or

other proceeding under the Code. The Court may, however, if it thinks fit and shall, on the application of the prosecution or the accused, summons and examine any such person as to the facts contained in his affidavit.

15. The new Chapter contains five sections, namely, Sections 138 to 142. These are different from the old sections, i.e., Sections 138 and 139.

16. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country in a large number of commercial transactions, it was noted that the cheques were given merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. Undoubtedly, dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious set back. The Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment enacted the aforesaid provisions. The remedy available in a civil court is a long drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee.

17. Experience has shown that the criminal prosecution under the provisions of Sections 417 and 420 IPC have not proved efficacious to bring home the guilt of the drawer-accused. In this background, these new provisions have been enacted. The object and intention of incorporating these provisions were to lend greater integrity and credibility to the business transactions and to establish that the cheques are a trustworthy substitute for cash payment. The other object and the intention of the legislature can be easily discerned that the legislature was keen and anxious for expeditious disposal of cases pertaining to dishonouring of cheques. The said amendments were infact introduced primarily to accomplish the said object.

18. The Courts have to respect the intention of the Parliament - a combined will of the people of this country and adopt suitable and effective procedure to achieve the object. The Court's procedure have to be designed to fulfill the object and the intention behind incorporating the aforesaid provisions. In other words, the Courts must develop or carve out the procedure by which the complaints filed under these provisions are disposed of as expeditiously as possible.

19. While enacting these provisions, the legislature has been very careful in protecting the honest drawers. Accordingly, dishonour of cheque per se has not been made an offence. A provision of a demand of notice has been incorporated. The drawer gets 15 days" statutory notice to make payment of the cheque amount and even then if he fails to make payment, an offence punishable u/s 138 of the Act is attracted.

20. The provisions of Section 138 of the Act would be attracted only when the

cheque has been issued for the discharge of any debt or other legally enforceable liability. The maker of the cheque is not liable for prosecution if the cheque is given by way of a gift, present or donation and is dishonoured. This view has been taken in the case of Totasri Rajani Vs. Superintendent of Police, Nalgonda and Others, .

21. The Full Bench of Kerala High Court in a case S.K.D. Lakshmanan Fireworks Industries and Another Vs. K.V. Sivarama Krishnan and Another, observed as under:

"The object 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 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 provisions have been incorporated in the chapter creating a new offence in case 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."

22. In M/s. Electronics Trade and Technology Development Corpn. Ltd., Secunderabad Vs. M/s. Indian Technologists and Engineers (Electronics) Pvt. Ltd. and another, , the Supreme Court while deciding the said matter u/s 138 of the Act, observed that the object of bringing Section 138 on Statute appears to be to inculcate faith in the efficacy of the banking operations and credibility in transacting business on negotiable instruments.

23. A very large number of complaints are pending in Delhi Courts for several years. It is unfortunate that clear directions given by this Court in Surendra Sethi vs. State 1997 (1) C.C.C 211 and Braham Prakash vs. State and Anr. 1997 (1) C.C.C 212 have been totally disregarded.

24. The Courts have failed to accomplish the object sought to be achieved by incorporating these provisions. It is the bounded duty of Courts to fulfill the object sought to be achieved by incorporating these provisions. The subordinate courts have not appreciated the purpose for incorporating these provisions in proper perspective. Therefore, it has become imperative to issue some directions to streamline the process of adjudication of complaints of the aforesaid nature. According to the data made available to this court by the learned District Judge, as on 30-9-2000 there are in all 53,724/- complaints under Sections 138 to 142 of the Negotiable Instrument Act pending in Delhi courts.

Court wise pendency

Patiala House : 36,525 Tis Hazari : 15,030 Karkardooma : 2,169 -----
Total 53,724 -----

25. A large number of complaints are pending for a long time because of totally inadequate number of judicial officers available with the Delhi Judicial Service. The judicial officers are already over-burdened. The available infrastructure is also wholly inadequate. The Government of N.C.T of Delhi, the Ministry of Law and Justice and other concerned authorities must appreciate the gravity of the situation and take necessary remedial steps immediately.

26. Looking to the manner in which these complaints are presently adjudicated by the trial courts, it would take at least 8 to 10 years before most of these complaints are adjudicated. The entire purpose of incorporating these provisions by amendment stands totally defeated. The complainants have to indefinitely wait for years and years before their complaints are adjudicated.

27. The Court must adopt pragmatic approach in dealing with the cases of this nature. These cases are not only flooding the trial courts but a very large number of cases of this nature are filed in other Courts including the High Courts and even in the Supreme Court in one form or the other. Satisfactory pragmatic solution puts an end not only to the complaint but to all the subsequent multiple litigation in various Courts. In most cases of this nature civil suits for recovery are also filed during the pendency of the complaints to save the limitation. It must be clearly understood that these complaints emanate from the commercial transactions. In most cases the complainants are interested in the money due from the accused and they have little interest in securing their conviction.

28. The accused also file multiple proceedings primarily to gain time even when they fully understand inherent weakness of their cases. The Courts should not become victims of this design of the accused. In most of these cases the accused hardly has any defense.

29. Immediately after the presence of the accused is secured in the Court an option be given to him whether he/she is even at that stage willing to pay the amount due and payable to the complainant. Experience reveals that in most cases accused come forward and offer to pay the amount. This would happen when the accused knows that he cannot gain much time and the complaint filed against him can be disposed of expeditiously.

30. In this view of the matter, I deem it appropriate to give the following directions to give effect to the underlying object and intention of the said provisions of Sections 138 to 142 of the Negotiable Instruments Act in the larger public interest:

a) The concerned Courts must examine the complainant within three months of assigning the complaint to the officer concerned.

b) The Courts instead of examining other cited witnesses orally can accept their affidavits and on the request of the accused they can be directed to appear for cross examination.

c) A lot of time is wasted at the stage of summoning the accused. Looking to the

prevalent state of affairs it is imperative that all possible steps to serve the summons on the accused must be taken in the first instance itself. Summons be sent by registered A.D., Speed Post, Courier and be sent even through a Court Process Server if it becomes imperative. The Courts should avoid giving long dates and make serious endeavor to secure the presence of the accused.

d) The complaints filed by the complainants must be disposed of as early as possible and in any event within six months after the statement of the complainant has been examined by the Court. In case the concerned Judicial Officer is not able to dispose of the complainant within six months after the complainant has been examined, then the concerned judicial officer must submit a report to the District and Sessions Judge indicating the reasons which led to the delay in the disposal of the complaint. The report submitted by the concerned Judicial Officer shall be taken into consideration while evaluating the performance of the concerned judicial officer.

e) Serious endeavor must be made to dispose of the pending complaints expeditiously to avoid multiplicity of proceedings before various courts.

f) Looking to the fact that a large number of complaints are pending in Delhi courts, particularly in Patiala House Courts and Tis Hazari Courts, it has become imperative to direct the concerned District & Sessions Judge and the Judge in charge, Patiala House to assign the work pertaining to Sections 138 to 142 Negotiable Instruments Act exclusively to the six judicial officers in Patiala House courts and four officers in Tis Hazari courts at least for a period of two years. This arrangements be worked out within four weeks. Ordinarily, this Court would have assigned exclusive work to the larger number of officers particularly in Patiala House courts but looking to the available number of judicial officers and infrastructure, it would be difficult to assign the work of these complaints to larger number of officers for the time being to exclusively handle the complaints. Since the number of complaints pending in Karkardooma courts are only 2169, no specific directions are required.

31. Before I part with these cases, I would like to place on record my deep sense of appreciation for the able assistance provided by Mr.A.K.Singla, Mr.Anil Arora, Mr.Rajiv Awasthi, Ms.Seema Gulati and Mr.Arun Aggarwal, Advocates.

32. A copy this judgment be sent to the learned District Judge and the Judge in charge, Patiala House through a special messenger.

33. These petitions are accordingly disposed of. The parties are directed to appear before the concerned courts on 13th November, 2000 for further proceedings.