Supreme Court of India
Nepc Micon Limited And Others vs Magma Leasing Limited on 29 April, 1999
Author: Shah
Bench: K.T.Thoms, M.B.Shah

PETITIONER:
NEPC MICON LIMITED AND OTHERS

Vs.

RESPONDENT:
MAGMA LEASING LIMITED

DATE OF JUDGMENT: 26/04/1999

BENCH:
K.T.Thoms, M.B.Shah

JUDGMENT:

Shah, J.

Leave granted.

NEPC Micon Limited, Appellant No. 1 and its directors approached the High Court for quashing the proceedings in Case No. C-494 of 1997 pending on the file of the Metropolitan Magistrate, Calcutta, initiated by Magma Leasing Limited, Respondent-Company under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the Act). It was alleged by the complainant that in discharge of its existing liability, the appellant-Company had given five cheques dated 1st January, 1997 for various amounts totalling to Rs. 58,25,980/- drawn on Canara Bank, Broadway Branch, Madras, in favour of the Respondent-Company. Those cheques were duly tendered to the bankers, Punjab National Bank, Calcutta for encashment, but were returned by the banker of the accused persons, that is, Canara Bank, Madras with the remark account closed. Appellants have also challenged before the High Court the order dated 10.12.1997 passed by the Metropolitan Magistrate rejecting their application under Section 258, Criminal Procedure Code for dropping the proceedings. In that application before the Metropolitan Magistrate, appellants have stated that before closing the account on behalf of appellant No. 1, a letter dated 3rd August 1996 was sent by the second accused to the Chief Manager, Canara Bank, Madras informing them to close their group companys accounts; in case, any of the cheque by mistake comes to the Canara Bank, Madras, then the same be sent back with the note account closed payment stopped. That Revision Application under Section 482, Criminal Procedure Code was rejected by High Court by its judgment and order dated 15th June, 1998. Against that Order, the present appeal is filed by special leave in which this Court issued notice on 26th March, 1999 for final disposal. At the time of hearing of this matter, learned Counsel for the appellants submitted that complaint, on the face of it, does not make out any offence punishable under Section 138 of the Negotiable Instruments Act and, therefore, it deserves

to be quashed. He submitted that cheques were returned by the bank with an endorsement account closed which is not covered by the section. He submitted that Section 138 envisages only two situations, which would fall within its purview, namely, (i) the amount of money standing to the credit of the account is insufficient to honour the cheque; or (ii) that it exceeds the amount arranged to be paid from that account by an agreement made with the bank. It is his contention that there are more than 40 kinds of eventualities where the bank may return the cheque but the legislature in its wisdom has specified only the aforesaid two situations and, therefore, return of the cheque on the ground that the account being closed would not fall within Section 138. He has fairly pointed out the conflicting views expressed by the various High Courts on the aforesaid question. He referred to the decisions in the case of G. F. Hurasikattimath vs. Sr. of Kant. 70 Company cases 278 (Karnataka), S.Prasanna vs. R. Vijayalakshmi 1192 Criminal LJ 1233 (Madras) and Om Prakash Bharadwaj Maniyar vs. Swati Girish Bhide & Ors. wherein the Courts have taken the view that Section 138 would not be attracted in a case where cheque is dishonoured on the ground of closure of account by the drawer of the cheque in the particular bank on which he has drawn the cheque as Section 138 is a penal provision and should be construed strictly. He has also pointed out the decisions in Shivendra Samsguiri vs. M/s. Adrnio & Anr. [1996 Cr. L.J. 1816 (Bengal)], Veeraraghavan Vs. Lalita Kr. [1995 Cr. L. J. 1882 (Madras)], M/s. Dada Silk Mills Vs. Indian Overseas Bank Banking Co. [1994 Cr. L J 2874 (Gujarat)], M/s. G. M. Mittal Stainless Steels Ltd. Vs. M/s. Nagarjuna Investment Trust Ltd. [1995 (4) Crimes 379 (Andhra Pradesh)], Japahari Vs. Priya [1994 (1) Crimes 3798 (Kerala)] and Rakesh Porwal vs. Varayan Joglekar [1993 Cr. L.J.688] wherein a contrary view has been taken and the Courts have held that Section 138 would be applicable in a case where cheque is dishonoured on the ground that account by the drawer is closed. For deciding the contention raised by the learned counsel for the appellant, it would be necessary to refer to the relevant Sections 138 and 140 which are as under: - 138. Dishonour of cheque for insufficiency, etc., of funds in the account Where any cheque drawn by a person on an 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 of 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.

140. Defence which may not be allowed in any prosecution under Section 138 It shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

From Section 138, it is apparent that (i) cheque should be drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account; (ii) the cheque should be returned by the bank unpaid either because:- (a) the amount of money standing to the credit of that account is insufficient to honour the cheque; or (b) it exceeds the amount arranged to be paid from that account by a person with the bank. (iii) In such a situation, such person (drawer of cheque) shall be deemed to have committed an offence. Further, the offence will be complete only when the conditions in the proviso (a), (b) and (c) are complied with. Hence, the question is, in a case where cheque is returned by the bank unpaid on the ground that the account is closed, would it mean that cheque is returned as unpaid on the ground that the amount of money standing to the credit of that account is insufficient to honour the cheque. In our view, the answer would obviously be in the affirmative because cheque is dishonoured as the amount of money standing to the credit of that account was nil at the relevant time apart from it being closed. Closure of the account would be an eventuality after the entire amount in the account is withdrawn. It means that there was no amount in the credit of that account on the relevant date when the cheque was presented for honouring the same. The expression the amount of money standing to the credit of that account is insufficient to honour the cheque is a genus of which the expression that account being closed is specie. After issuing the cheque drawn on an account maintained, a person, if he closes that account apart from the fact that it may amount to another offence, it would certainly be an offence under Section 138 as there was insufficient or no fund to honour the cheque in that account; Further, cheque is to be drawn by a person for payment of any amount of money due to him on an account maintained by him with a banker and only on that account cheque should be drawn. This would be clear by reading the Section along with provisos (a), (b) & (c ). Secondly, proviso (c) gives an opportunity to the drawer of the cheque to pay the amount within 15 days of the receipt of the notice as contemplated in proviso (b). Further, Section 140 provides that it shall not be a defence in prosecution for an offence under Section 138 that the drawer has no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that Section. Dishonouring the cheque on the ground that account is closed is the consequence of the act of the drawer rendering his account to a cipher. Hence, reading Section 138 and 140 together, it would be clear that dishonour of the cheque by a bank on the ground that account is closed would be covered by the phrase the amount of money standing to the credit of that account is insufficient to honour the cheque. Learned Counsel for the appellants, however, submitted that Section 138 being a penal provision, it should be strictly interpreted and if there is any omission by the Legislature, wider meaning should not be given to the words than what is used in the Section. In our view even with regard to penal provision, any interpretation, which withdraws life and blood of the provision and makes it ineffective and a dead

letter should be averted. If the interpretation, which is sought for, were given, then it would only encourage dishonest persons to issue cheques and before presentation of the cheque close that account and thereby escape from the penal consequences of Section 138. This Court in the case of Kanwar Singh Vs. Delhi Administration, (1965) 1 SCR 7 while construing Section 418

(i) of the Delhi Municipal Corporation Act, 1959 observed:

- It is the duty of the Court in construing a statute to give effect to the intention of the legislature. If, therefore, giving a literal meaning to a word used by the draftsman, particularly in a penal statute, would defeat the object of a legislature, which is to suppress a mischief, the Court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief.

Further, while interpreting, the statutory provision rule dealing with penalty under the Drugs and Cosmetics Act, 1940 and the rules in the case of Swantraj and Others Vs. State of Maharashtra 1975(3) S.C.C. 322, this Court held that every legislation is a social document and judicial construction seeks to decipher the statutory mission, language permitting, making the one from the rule I Heydons case of suppressing the evil and advancing the remedy. Court held that what must tilt the balance is the purpose of the statute, its potential frustration and judicial avoidance of the mischief by a construction whereby the means of licensing meet the ends of ensuring pure and potent remedies for the people. Court observed that this liberty with language is sanctified by great judges and textbooks. Maxwell instructs as in these words:

There is no doubt that the office of the Judge is, to make such construction as will suppress the mischief, and advance the remedy, and to suppress all evasions for the continuance of the mischief. To carry out effectively the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, to an indirect or circuitous manner that which it has prohibited or enjoyed: quando aliquid prohibetur, prohibetur et omne pe quod devenitur ad illud.

The manner of construction has two aspects. One is that the Courts, mindful of the mischief rule, will not be astute to narrow the language of a statute so as to allow persons within its purview to escape its net. The other is that the statute may be applied to the substance rather than the mere form of transactions, thus defeating any shifts and contrivances which parties may have devised in the hope of thereby falling outside the Act. When the Courts find an attempt at concealment, they will, in the words of Wilmot, C.J. brush away the cobweb varnish, and shew the transactions in their true light.

This benignant rule originated four hundred years ago in Heydons case, which resolved That for the sure and true interpretation of all statistics in general (be they penal or beneficial restrictive or enlarging of the common law) four things are to be discerned and considered: (1st) What was the common law before the making of the Act, (2nd) What was the mischief and defect for which the common law did not provide. (3rd) What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth. And, (4th) The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the

remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro private commodo, and to ad force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.

Even with regard to the penal provision which is also remedial one in the case of State of Tamil Nadu Vs. M.K.Kandaswami and Others 1974(4) S.C.C. 745, the Court observed that in interpreting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book should be eschewed; if more than one construction is possible that which preserves its workability, and efficacy is to be preferred to the one which would render it otiose or sterile.

In the case of M/s. International Ore and Fertilizers (India) Pvt. Ltd. Vs. Employees State Insurance Corporation AIR (1988) S.C. 79, this Court referred to often quoted passage from the decision in the case of Seaford Court Estates ltd. Vs. Asher (1949) 2 All ER 155 wherein Lord Denning, L.J. observed: The English language is not an instrument of mathematical precision. Our literature would be much poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if the Acts of Parliament wee drafted with divine pre-science and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give force and life to the intention of legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do so as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases (Emphasis supplied) Lastly, we would refer to the decision by a Three-Judge Bench of this Court in the case of Modi Cements Ltd. Vs. Kuchil Kumar Nandi (1998) 3 S.C.C. 249 dealing with a similar contention and interpreting Section 138 of the Act. In that case, the Court referred to the earlier decisions in the case of Electronics Trade and Technology Development Corporation (1996) 2 SCC 739 and K.K. Siddharthan Vs. T.P. Praveena Chandran (1996) 6 S.C.C. 369 and agreed that the legal proposition enunciated in the aforesaid decisions to effect that if the cheque is dishonoured, because of stop payment instruction to the bank, Section 138 would get attracted. It also amounts to dishonour of the cheque within the meaning of Section 138 when it is returned by the bank with the endorsement like (I) in this case, referred to the drawer (ii) instructions for stoppage of payment and stamped (iii) exceeds agreement. The Court observed that the object of bringing Section 138 on statute appears to be to inculcate faith in the efficacy of banking operations and credibility in transaction in business on negotiable instruments and to promote the efficacy of banking operations and to ensure credibility in transacting business through cheques. Thereafter, the Court disagreed with other views expressed in aforesaid two cases and held that once the cheque is issued by the drawer a presumption under section 139 must follow and merely because the drawer issues a notice to the drawee or to the bank for stoppage of the payment it will not preclude an action under Section 138 of the Act by the drawee or the holder of a cheque in due course. The Court further held that it will

make section 138 a dead letter if the contention that by giving instruction to the Bank to stop payment immediately after issuing a cheque against the debt or liability, the drawer can easily get rid of the penal consequences notwithstanding the fact that deemed offence was committed. Finally, the Court held that Section 138 of the Act gets attracted only when the cheque is dishonoured. In view of the aforesaid discussion we are of the opinion that even though Section 138 is a penal statute, it is the duty of the Court to interpret it consistent with the legislative intent and purpose so as to suppress the mischief and advance the remedy. As stated above, Section 138 of the Act has created a contractual breach as an offence and the legislative purpose is to promote efficacy of banking and of ensuring that in commercial or contractual transactions cheques are not dishonoured and credibility in transacting business through cheques is maintained. The above interpretation would be in accordance with the principle of interpretation quoted above brush away the cobweb varnish, and show the transactions in their true light (Wilmot C. J.) or (by Maxwell) to carry out effectively the breach of the statute, it must be so construed as to defeat all attempts to do, or avoid doing, to an indirect or circuitous manner that it has prohibited. Hence, when the cheque is returned by a bank with an endorsement account closed, it would amount to returning the cheque unpaid because the amount of money standing to the credit of that account is insufficient to honour the cheque as envisaged in Section 138 of the Act. In the result, the appeal is dismissed. However, there shall be no order as to costs.