Supreme Court of India
Prem Chand Vijay Kumar vs Yashpal Singh And Anr on 2 May, 2005
Author: A Pasayat
Bench: Arijit Pasayat, S.H. Kapadia

CASE NO.:
Appeal (crl.) 651 of 2005

PETITIONER:
Prem Chand Vijay Kumar

RESPONDENT:
Yashpal Singh and Anr

DATE OF JUDGMENT: 02/05/2005

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:

J U D G M E N T (Arising out of SLP(Crl.) No. 1507 of 2004) ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the legality of the judgment rendered by a learned Single Judge of the Punjab and Haryana High Court holding that the proceedings initiated on the basis of a complaint alleging infraction of Section 138 of the Negotiable Instrument Act, 1881 (in short the 'Act') was not maintainable. Therefore, the proceedings were quashed, allowing the petition filed under Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Code').

Background facts filtering out unnecessary details are as under:

The complaint was filed by the appellant alleging that in the year 1995 respondent no.1 had issued a cheque for a sum of Rs.5,15,053.72 representing balance amount payable to the appellant for supply of goods to a partnership firm of which respondents are partners. It was indicated that the total amount payable was Rs.49,21,482.72 as against which the accused persons had paid Rs.44,06,429/-, leaving balance of Rs.5,15,053.72. A cheque [drawn on Oriental Bank of Commerce, Ladwa branch (Account no.954)]was issued for the same amount on 27.1.1995. The cheque was signed by respondent no.1 Yashpal Singh, for the firm and respondent no.2 Nirpal Singh, was a partner of the partnership firm, namely, M/s Sat Guru Rice Traders, New Delhi. The cheque was dishonoured due to inadequacy of funds in the account. Intimation was given on 6.2.1995. Notice was issued by the appellant demanding payment by lawyer's notice dated 17.2.1995. The amount was not paid. The respondents requested the appellant for some time to make the payment. On the request of the respondents, the cheque was again presented on 6.7.1995 and it was again dishonoured due to inadequacy of funds. Intimation in this regard was sent to the appellant on 10.7.1995. Again, lawyer's notice was sent on 24.7.1995. Reply was sent by the respondents on 16.8.1995 refuting the allegations contained in the legal notice. The complaint was lodged on

28.8.1995. Charges were framed.

Respondent filed an application for discharge which was dismissed by the trial court by order dated 29.1.2002. The order was challenged before the High Court which by the impugned judgment held that the requirements of Section 142 of the Act were not met.

In support of the appeal, learned counsel for the appellant submitted that the High Court was not right in entertaining the petition under Section 482 of the Code. The High Court lost sight of the fact that the application was filed by the respondents long after the charges were framed. High Court has erroneously placed reliance on this Court's decision in Sadanandan Bhadran v. Madhavan Sunil Kumar (1998 (6) SCC 514). On the contrary, the decision in Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd. and Ors. (2001 (6) SCC 463) is applicable. The period of limitation has to be reckoned from 10.8.1995 i.e. the date on which the respondents-accused persons replied to the legal notice dated 24.7.1995. As the complaint was filed on 28.8.1995 the same was well within time. It was submitted that the respondent-accused persons categorically stated in their reply dated 10.8.1995 that the first notice had not been served on them.

Learned counsel for the respondent-accused persons on the other hand, submitted that the High Court had rightly taken the view that the requirements of Section 142 were not met. It was pointed out that the effect of the first notice was lost in view of the fact that the second notice was given. The High Court has rightly applied the ratio in Sadanandan Bhadran's case (supra). It is not in dispute that there was issuance and receipt of the lawyer's notices on both the occasions. In fact, the acknowledgement of service of first notice has been filed by the complainant-appellant himself and at all stages the case proceeded on the footing that the first notice had been issued and served. The High Court has categorically noted that the first notice had been served on the respondent. With reference to the complaint it was submitted that the appellant himself accepted that the first notice had been served. Therefore, he cannot be permitted to take the different stand that the notice was not served and in any event the second notice did not provide the cause of action.

For resolution of the controversy Sections 138 and 142 of the Act are relevant. They read as follows:

"Section 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 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.

Section 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 under Section 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 to Section 138;

(Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.)

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

Clause (a) of the proviso to Section 138 does not put any embargo upon the payee to successively present a dishonoured cheque during the period of its validity. This apart, in the course of business transactions it is not uncommon for a cheque being returned due to insufficient funds or similar such reasons and being presented again by the payee after sometime, on his own volition or at the request of the drawer, in expectation that it would be encashed. The primary interest of the payee is to get his money and not prosecution of the drawer, recourse to which, normally, is taken out of compulsion and not choice. On each presentation of the cheque and its dishonour, a fresh right-and not a cause of action - accrues in his favour. He may, therefore, without taking pre-emptory action in exercise of his such right under clause (b) of Section 138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque.

But once he gives a notice under clause (b) of Section 138, he forfeits such right in case of failure of the drawer to pay the money within the stipulated time, he would be liable for offence and the cause of action for filing the complaint will arise.

In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908 (in short 'CPC') "cause of action" means every fact which it is necessary to establish to support a right or obtain a judgment. Viewed in that context, the following facts are required to be proved to successfully prosecute the drawer for an offence under Section 138 of the Act:

(a) that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured;

(b) that the cheque was presented within the prescribed period;

(c) that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and

(d) that the drawer failed to make the payment within 15 days of the receipt of the notice. Proceeding on the basis of the generic meaning of the term "cause of action", certainly each of the above facts would constitute a part of the cause of action but clause (b) of Section 142 gives it a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and that is the failure to make the payment within 15 days from the date of the receipt of the notice. A combined reading of Sections 138 and 142 makes it clear that cause of action is to be reckoned accordingly. The combined reading of the above two sections of the Act leaves no room for doubt that cause of action within the meaning of Section 142(c) arises - and can arise - only once. The period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawer expires.

As noted in Sadanandan Bhadran's case (supra) once a notice under clause (b) of Section 138 of the Act is "received" by the drawer of the cheque, the payee or holder of the cheque forfeits his right to again present the cheque as cause of action has accrued when there was failure to pay the amount within the prescribed period and the period of limitation starts to run which cannot be stopped on any account.

One of the indispensable factors to form the cause of action envisaged in Section 138 of the Act is contained in clause (b) of the proviso to that section. It involves the making of a demand 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". If no such notice is given within the said period of 15 days, no cause of action could have been created at all.

Thus, it is well settled that if dishonour of a cheque has once snowballed into a cause of action it is not permissible for a payee to create another cause of action with the same cheque.

In Sil Import, USA v. Exim Aides Silk Exporters, Bangalore (1999 (4) SCC 567), it was held that the language used in Section 142 admits of no doubt that the magistrate is forbidden from taking cognizance of the offence if the complaint was not filed within one month of the date on which the cause of action arose. Completion of the offence is the immediate forerunner of rising of the cause of action. In other words, cause of action would arise soonafter completion of the offence and period of limitation for filing of the application starts simultaneously running.

It is to be noted that though a somewhat confusing statement was made by the respondents regarding the receipt of the first lawyer's notice. Therefore, what was kept alive was a fresh right and not cause of action. Therefore, Sadanandan Bhadran's case (supra) was rightly applied. The impugned judgment does not suffer from any infirmity to warrant interference.

The appeal is dismissed.