Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 261-264 OF 2002

MSR Leathers … Appellant

Vs.

S. Palaniappan & Anr. … Respondents

J U D G M E N T

PINAKI CHANDRA GHOSE, J.

1. This matter was referred before the larger Bench by order dated 25th March, 2009. The question referred to the larger Bench was : "whether the action of the appellant was time-barred under Section 138(b) of the Negotiable Instruments Act or not ?"

2. The facts of the case, briefly stated, are that the respondent issued four cheques to the appellant on 14th August, 1996. The appellant presented those four cheques on 21st November, 1996 and on presentation, those cheques were returned by the Bank with an endorsement "not arranged funds for". At the request of the respondent, the appellant did not present the said cheques since the respondent agreed to settle the dispute. However, the respondent failed to settle the dispute subsequently. In these circumstances, on 8th January, 1997, the appellant sent a notice (to the respondent) under section 138(b) of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act'). The respondent duly received the said notice. Subsequent thereto, those cheques were again presented before the Bank on 21st January, 1997 by the appellant. On presentation, the said cheques were dishonoured for want of sufficient funds.

3. On 28th January, 1997 the appellant sent a notice under Section 138(b) of the Act and called upon the respondent to pay the said amount with interest within 15 days. The respondent duly received the said notice on 3rd February, 1997.

4. From the said facts, it appears that while the first notice dated 8th January, 1997 was beyond the limitation period, as required under Section

138(b) of the Act, the second notice sent by the appellant under the Act was within the limitation period from the date the Bank informed the appellant on the second occasion, i.e., on 28th January, 1997. Thereafter, the appellant filed a complaint before the Trial Court on 4th March, 1997. In the circumstances, the question arises whether the action of the appellant was time-barred under Section 138(b) of the Act or not.

5. The Division Bench since expressed their Lordships' reservation about the correctness of the law laid down in **Sadanandan Bhadran vs. Madhavan Sunil Kumar** [1998 (6) SCC 514] and felt that it requires to be considered by a larger Bench and the matter was placed before the Hon'ble Chief Justice for consideration.

6. Accordingly, the matter was placed before a larger Bench. Their Lordships, while deciding the said question, noticed that proviso to Section 138 stipulates following three distinct conditions precedent, which must be satisfied before dishonour of the cheque can constitute an offence and becomes punishable.

> "…*The first condition is that the cheque ought to have 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. The second condition is that the payee or the holder in due course of the cheque, as the case may be, ought to make a demand for the payment of the said amount of*

> *money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. The third condition is that the drawer of such a cheque should have failed to make 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….*"

Fulfilment of those three conditions constitutes an offence under Section 138 and it can then be said that an offence under the said section has been committed by the person issuing the cheque.

7. Their Lordships further noticed that no court shall take cognizance of any offence punishable under Section 138 except when a complaint in writing is made by the payee or by the holder in due course and such complaint has to be made within one month from the date on which the cause of action arises under clause (b) of the proviso to Section 138. It is also noticed by their Lordships that neither Section 138 nor Section 142 of the Act or any other provision contained in the said Act prevents the holder or the payee of the cheque from presenting the cheque for encashment for any number of occasions within a period of six months from the date of its issuance or within a period of its validity, whichever is earlier. Therefore, it appears that the payee or the holder has a right to present the same as many

number of times for encashment within a period of six months or within its validity period, whichever is earlier.

8. After analysing Sections 138 and 142 of the Act, their Lordships held that "… *we find it difficult to hold that the payee would lose his right to institute such proceedings on a subsequent default that satisfies all the three requirements of Section 138.*" Accordingly, their Lordships held as follows :

> "*23. Coming then to the question whether there is anything in Section 142(b) to suggest that prosecution based on subsequent or successive dishonour is impermissible, we need only mention that the limitation which* ***Sadanandan Bhadran's*** *case (supra) reads into that provision does not appear to us to arise. We say so because while a complaint based on a default and notice to pay must be filed within a period of one month from the date the cause of action accrues, which implies the date on which the period of 15 days granted to the drawer to arrange the payment expires, there is nothing in Section 142 to suggest that expiry of any such limitation would absolve him of his criminal liability should the cheque continue to get dishonoured by the bank on subsequent presentations. So long as the cheque is valid and so long as it is dishonoured upon presentation to the bank, the holder's right to prosecute the drawer for the default committed by him remains valid and exercisable. The argument that the holder takes advantage by not filing a prosecution against the drawer has not impressed us. By reason of a fresh presentation of a cheque followed by a fresh notice in terms of Section 138, proviso (b), the drawer gets an extended period to make the payment and thereby benefits in terms of further opportunity to pay to avoid prosecution. Such fresh opportunity cannot held the defaulter on any juristic principle, to get a complete absolution from prosecution*."

9. It was further held as follows :

"*31. Applying the above rule of interpretation and the provisions of Section 138, we have no hesitation in holding that a prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default which was followed by a statutory notice and a failure to pay had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honour their commitments made in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other similar reason. There is in our opinion no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second or successive time.*

32. The controversy, in our opinion, can be seen from another angle also. If the decision in ***Sadanandan Bhadran****'s case (supra) is correct, there is no option for the holder to defer institution of judicial proceedings even when he may like to do so for so simple and innocuous a reason as to extend certain accommodation to the drawer to arrange the payment of the amount. Apart from the fact that an interpretation which curtails the right of the parties to negotiate a possible settlement without prejudice to the right of holder to institute proceedings within the outer period of limitation stipulated by law should be avoided we see no reason why parties should, by a process of interpretation, be forced to launch complaints where they can or may like to defer such action for good and valid reasons. After all, neither the courts nor the parties stand*

to gain by institution of proceedings which may become unnecessary if cheque amount is paid by the drawer. The magistracy in this country is over-burdened by an avalanche of cases under Section 138 of Negotiable Instruments Act. If the first default itself must in terms of the decision in ***Sadanandan Bhadran****'s case (supra) result in filing of prosecution, avoidable litigation would become an inevitable bane of the legislation that was intended only to bring solemnity to cheques without forcing parties to resort to proceedings in the courts of law. While there is no empirical data to suggest that the problems of overburdened magistracy and judicial system at the district level is entirely because of the compulsions arising out of the decisions in* ***Sadanandan Bhadran****'s case (supra), it is difficult to say that the law declared in that decision has not added to court congestion*."

10. In the result, their Lordships overruled the decision in **Sadanandan Bhadran's** case (supra) and held that the prosecution based on second or successive dishonour of the cheque is also permissible so long as it satisfies the requirements stipulated under the proviso to Section 138 of the Act.

11. In the light of the said decision, we set aside the order passed by the High Court and allow these appeals.

……J.
(K.S. Radhakrishnan)

New Delhi; ……..J.

September 10, 2013. (Pinaki Chandra Ghose)