SUPREME COURT OF INDIA

Dalmia Cement (Bharat) Ltd.

Vs.

M/S.Galaxy Trades & Agencies Ltd.

Crl.A.No.957 of 2000

(R.P.Sethi and K.T.Thomas JJ.)

19.01.2001

JUDGMENT

R.P.Sethi, J.

1. The complaint filed under Section 138 of the *Negotiable Instruments Act, 1881* (hereinafter called "the Act") was quashed by the High Court vide the judgment impugned in this appeal holding that the same was barred by time as the complainant had allegedly failed to file it within the statutory period from the date of accruing of the cause of action. In order to appreciate the legal submissions, a resume of facts of the case is necessary. In its complaint, the appellant-company had stated that Accused Nos.2 to 9 who are partners of respondent-firm purchased cement from it and issued cheque for Rs.9,13,353.84 on 26th May, 1998 which was drawn on Karur Vysa Bank Ltd., Ernakulam Branch. When presented for collection, the cheque was dishonoured on account of insufficiency of funds in the account of the accused. The information regarding non payment of the cheque amount was communicated by the Bank to the complainant on 2.6.1998. The complainant on 13.6.1998, through its Advocate, issued a statutory notice in terms of Section 138 of the Act intimating respondents 1 and 2 regarding the dishonour of the cheque and calling upon the respondents to pay the said amount within a period of 15 days from the receipt of the said notice. The postal acknowledgement receipt of the notice, served upon the respondents, was received by the complainant on 15.6.1998. However, the respondents 1 and 2, vide their letter dated 20th June, 1998, which was received by the Advocates of the appellant on 30th June, 1998, intimated that they had in effect received empty envelopes without any contents and requested the appellant to mail the contents. It is worth noticing that by the time the complainant received the intimation of the respondents, the statutory period of filing the complaint was about to expire. Believing the averments of the respondents to be true, though not admitting but as an abundant caution the appellant presented the cheque again on 1.7.1998 to the drawee bank through their bankers. The cheque was again dishonoured by the drawee bank on 2.7.1998. A registered statutory notice was issued to the accused intimating the dishonour of the cheque and the payment was demanded. The accused received the said notice on 27.7.1998 but did not make the payment. According to the complainant, the accused on 6.7.1998 sent a registered cover to its Ernakulam office which contained some

waste newspaper bits. As despite dishonour of the cheque and receipt of notice, the cheque amount was not paid, the appellant filed the complaint on 9th Setpember, 1998, admittedly, within the statutory period from the second notice. The Additional Chief Judicial Magistrate, Ernakulam took the cognizance and issued process to the respondents. Instead of appearing before the Magistrate, the respondents filed a petition under Section 482 of the Code of Criminal Procedure in the High Court praying for quashing the complaint on the ground that the same was barred by limitation which was disposed of vide the judgment impugned in this appeal. The Act was enacted and Section 138 thereof incorporated with a specified object of making a special provision by incorporating a strict liability so far as the cheque, a negotiable instrument, is concerned. The law relating to negotiable instrument is the law of commercial world legislated to facilitate the activities in trade and commerce making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another. In the absence of such instruments, including a cheque, the trade and commerce activities, in the present day would, are likely to be adversely affected as it is impracticable for the trading community to carry on with it the bulk of the currency in force. The negotiable instruments are in fact the instruments of credit being convertible on account of legality of being negotiated and are easily passable from one hand to another. To achieve the objectives of the Act, the legislature has, in its wisdom, thought it proper to make such provisions in the Act for conferring such privileges to the mercantile instruments contemplated under it and provide special penalties and procedure in case the obligations under the instruments are not discharged. The laws relating to the Act are, therefore, required to be interpreted in the light of the objects intended to be achieved by it despite there being deviations from the general law and the procedure provided for the redressal of the grievances to the litigants. Efforts to defeat the objectives of law by resorting to innovative measures and methods are to be discouraged, lest it may affect the commercial and mercantile activities in a smooth and healthy manner, ultimately affecting the economy of the country. Section 138 of the Act makes a civil transaction to be an offence by fiction of law. 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 is returned by the bank unpaid either because of the amount or money standing to the credit of that person being insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account, such person, subject to the other conditions, shall be deemed to have committed an offence under the Section and be punished for a term which may extend to one year or with fine which may extend to twice the amount of cheque or with both. To make the dishonour of the cheque as an offence, the aggrieved party is required to present the cheque 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 and the payee or the holder in due course of the cheque makes a demand for payment of the cheque amount by giving a notice in writing to the drawer of the cheque within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid and drawer of the such cheque fails to make the payment of the amount within 15 days of the receipt of the said notice. Section 139 refers to presumption that unless the contrary is proved, the holder received the cheque of the nature referred to under Section 138 for the discharge in whole or in part or of any debt or other liability. Section 140 restricts the defence in any prosecution under Section 138 of the Act and Section 141 refers to such offence committed by the companies. Section 142 provides that notwithstanding anything

contained in the Code of Criminal Procedure no court shall take congnizance of an offence under the Section except upon a complaint in writing made by the payee or as the case may be, the holder of the cheque and that such complaint is made within one month of the date on which the cause of action arose under clause (c) of proviso to Section 138 of the Act. Supporting the judgment of the High Court, the learned counsel appearing for the respondents has submitted that as upon presentation and dishonour of the cheque by the bank on 28th May, 1998 which was intimated to the complainant, a cause of action had accrued, the complaint could be filed only within 30 days from the date of the alleged receipt of the first notice by the accused. He contends that as according to the complainant the postal acknowledgement receipt of the notice was received by the complainant on 15th June, 1998, the complaint filed by it after 15th July, 1998 was barred by time. As admittedly, the complaint was filed by the appellant on 9th September, 1998, it is contended that the same being barred by limitation was rightly quashed by the High Court. However, the learned counsel for the appellant submitted that as the respondents had disclaimed to have received the notice of dishonour sent to them on 13th June, 1998, no option was left to the appellant except to present the cheque again and when not paid, serve a fresh notice for the purposes of making out a case and offence within the meaning of Section 138 of the Act. To constitute an offence under Section 138 of the Act the complainant is obliged to prove its ingredients which include the receipt of notice by the accused under clause (b). It is to be kept in mind that it is not the 'giving' of the notice which makes the offence but it is the 'receipt' of the notice by the drawer which gives the cause of action to the complainant to file the complaint within the statutory period. This Court in *K.Bhaskaran v. Sankaran Vaidhyan Balan & Anr.*[1] considered the difference between 'giving' of a notice and 'receipt' of the notice and held: "On the part of the payee he has to make a demand by 'giving a notice' in writing. If that was the only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such 'giving', the travails of the prosecution would have been very much lessened. But the legislature says that failure on the part of the drawer to pay the amount should be within 15 days 'of the receipt' of the said notice. It is, therefore, clear that 'giving notice' in the context is not the same as receipt of notice. Giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer at the correct address.

2. In Black's Law Dictionary 'giving of notice' is distinguished from 'receiving of notice' (vide p.621): "A person notifies or gives notice to another by taking such steps as may be reasonably required to inform the other in the ordinary course, whether or not such other actually comes to know of it'. A person 'receives' a notice when it is duly delivered to him or at the place of his business.

3. If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It must be borne in mind that the court should not adopt an interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure.

4. In Maxwell's Interpretation of Statutes, the learned author has emphasised that 'provisions relating to giving of notice often receive liberal interpretation' (vide p. 99 of the 12th Edn.). The context envisaged in Section 138 of the Act invites a liberal interpretation for the person who has the statutory obligation to give notice because he is presumed to be the loser in the transaction and it is for his interest the very provision is made by the legislature. The words in clause (b) of the proviso to Section 138 of the Act show that the payee has the statutory obligation to 'make a demand' by giving notice. The thrust in the clause is on the need to 'make a demand'. It is only the mode for making such demand which the legislature has prescribed. A payee can send the notice for doing his part for giving the notice. Once it is despatched his part is over and the next depends on what the sendee does.

5. It is well settled that a notice refused to be accepted by the addressee can be presumed to have been served on him (vide *Harcharan Singh v. Shivrani*[2] *and Jagdish Singh v. Natthu Singh*[3]).

6. Here the notice is returned as unclaimed and not as refused. Will there by any significant difference between the two so far as the presumption of service is concerned? In this connection a reference to Section 27 of the General Clauses Act will be useful. The section reads thus:

> 27. Meaning of service by post-- Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or either of the expression 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

7. Section 27 of the General Clauses Act deals with the presumption of service of a letter sent by post. The despatcher of a notice has, therefore, a right to insist upon and claim the benefit of such a presumption. But as the presumption is rebuttable one, he has two options before him. One is to concede to the stand of the sendee that as a matter of fact he did not receive the notice, and the other is to contest the sendee's stand and take the risk for proving that he in fact received the notice. It is open to the despatcher to adopt either of the options. If he opts the former, he can afford to take appropriate steps for the effective service of notice upon the addressee. Such a course appears to have been adopted by the appellant-company in this case and the complaint filed, admittedly, within limitation from the date of the notice of service conceded to have been served upon the respondents. In *Sadanandan Bhadran v. Madhavan Sunil Kumar*[4] this Court held that clause (a) of the proviso to Section 138 did not put any embargo upon the payee to successively present a dishonoured cheque during the period of its validity. On each presentation of the cheque and its dishonour a fresh right and not cause of action accrues. The payee or holder of the cheque may, therefore, without taking pre-emptory action in exercise of his right under clause (b) of Section 138 of the Act, 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 a notice under clause (b) of Section 138 of the Act is 'received' by the drawer of the cheque, the payee or the 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. This Court emphasised that "needless to say the period of one month from filing the complaint will be reckoned from the date immediately falling the day on which the period of 15 days from the date of the receipt of the notice by the drawer expires" (emphasis supplied). In *SIL Import, USA v. Exim Aides Silk Exporters, Bangalore*[5] the respondents therein was an exporter of finished silk goods and the appellant company based at USA was an importer. The appellant owed a certain amount towards sale consideration of goods exported to it by the respondent and issued some cheque in their favour. Two of such cheques were returned dishonoured with reason "no sufficient funds". The respondents sent a notice to the appellant-company by fax on 11.6.1996 and notice by registered post on the next day which was received by the appellant on 25th June, 1996. The respondents filed a complaint before the Magistrate in respect of the said cheques on 8.8.1996. The appellant contended that the cause of action having accrued on the expiry of 15 days from the date of notice sent by fax on 26th June, 1996, the limitation for filing the complaint expired on 27th June, 1996, therefore, the complaint filed on 8.8.1996 could not be taken congnizance of by the trial court. Allowing the appeal this Court held: "The language used in the above section 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 cause of action. In other words cause of action would arise soon after completion of the offence, and the period of limitation for filing the complaint would simultaneously start running.

8. To circumvent the above hurdle, the respondent submitted that 15 days can be counted only from 25.6.1996, the date when the appellant received the notice sent by registered post and the cause of action would have arisen only on 11.7.1996. The complaint which was filed on 8.8.1996 is therefore within time, according to the learned counsel for the respondent.
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9. The requirement for sending a notice after the cheque is returned by the bank unpaid is set out in clauses (b) and (c) of the proviso to Section 138 of the Act. They read thus:

> "Provided that nothing contained in this Section shall apply unless--
> (a) x x x
>
> (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".

10. The duty cast on the payee on receipt of information regarding the return of the cheque unpaid is mentioned in clause (b) of Section 138. Within 15 days he has to make a demand for payment. The mode of making such a demand is also prescribed in the clause, that it should be 'by giving notice in writing to the drawer of the cheque'. Nowhere it is said that such notice must be sent by registered post or that it should be despatched through a messenger." and concluded:

"The upshot of the discussion is, on the date when the notice sent by fax reached the drawer of the cheque the period of 15 days (within which he has to make the payment) has started running and on the expiry of the period the offence is completed unless the amount has been paid in the meanwhile. If no complaint was filed within one month therefrom the payee would stand forbidden from launching a prosecution thereafter, due to the clear interdict contained in Section 142 of the Act."

11. It is conceded in this case that in response to the notice sent by the appellant through their counsel on 13th June, 1998, the respondents herein, vide their letter dated 20th June, 1998, intimated "received one empty envelope without any content in it. Therefore request you to kindly send the content, if any". This intimation was received by the appellant on 30th June, 1998, the day on which the period of limitation on the basis of earlier notice was to expire. They had exercised the option to accept the averments made by the respondents in their letter dated 20th June, 1998 and issue a fresh notice after again presenting the cheque. The respondents have not denied the issuance of their letter dated 20th June, 1998. Despite admitting its contents, they opted to approach the High Court for quashing the proceedings merely upon assumption, presumption and conjectures. They tried to blow hot and cold in the same breath, stating on the one hand that the notice of dishonour has not been received by them and on the other praying for dismissal of the complaint on the plea that the complaint was barred by time in view of the notice served by the appellant which they had not received. The plea of the respondents was not only contradictory, and after thought but apparently carved out to resist the claim of the complainant and thereby frustrate the provisions of law. The High Court fell in error by not referring to the letter of the respondents dated 20th June, 1998 and quashing the proceedings merely by reading a line from para 6 of the complaint. The appellant in para 7 of their complaint had specifically stated that "Even though the complainant is not admitting the said allegation, on abundant caution the complainant presented the cheque again on 1.7.98 to the drawee bank through the complainant's bankers, Punjab National Bank. The cheque was again dishonoured by the drawee bank on 2.7.98 a registered lawyer notice was issued to the 1st accused firm as well as to the 2nd accused intimating the dishonour of the cheque and demanding payment. The accused have received the notice on 27.7.98. The accused did not make any payment so far". The receipt of the second notice has concededly not been denied by the respondents. Under the circumstances the appeal is allowed and the order of the High Court quashing the complaint filed by the

appellant is set aside. The trial Magistrate is directed to proceed against the respondents in accordance with the provisions of law and expeditiously dispose of the complaint.

[1]*[1999 (7) SCC 510]*
[2]*1981 (2) SCC 535*
[3]*1992 (1) SCC 647*
[4]*1998 (6) SCC 514*
[5]*1999 (4) SCC 567*