SUPREME COURT OF INDIA

K. R. Indira

Vs.

Dr. G. Adinarayana

Crl.A.Nos.1136 with 1137 of 2001

(Doraiswamy Raju and A. Pasayat JJ.)

09.10.2003

JUDGEMENT

Arijit Pasayat, J.

1. An interesting question in the background of Clause (b) of the proviso to Section 138 of the *Negotiable Instruments Act, 1881* (in short the 'Act') arises in these appeals.

2. Filtering out unnecessary details the background facts are as follows:

> "Appellant-Dr. K. G. Ramachandra Gupta (in Crl. A. No. 1137/2001) and his wife, Smt. K. R. Indira (appellant in Crl. A. No. 1136/2001) filed complaints alleging that the respondent-Dr. G. Adinarayana, a friend of the appellant-Dr. K. G. Ramachandra Gupta acted in a manner unbecoming of a friend. In essence, two doctors were trying to use instruments in fighting out a bitter legal battle and not trying to save a person fighting for life. Three separate complaints were filed alleging that loans were advanced by the appellants to the respondent for which he executed pronotes with a view to ensure repayment of loans with interest. Four cheques were issued, two in the name of the husband and two in the name of the wife. As the cheques bounced when presented for collection with an endorsement 'not arranged for', notices were issued calling upon the accused-respondent to pay the cheque amounts within 15 days from the receipt of notices. Though the accused-respondent received the notices, he did not choose to respond and after waiting for the stipulated period of 15 days, complaints were filed by the appellants. The trial Court came to the conclusion that the complainants failed to prove that the cheques were issued by way of repayment of the loans advanced by the complainants and accepted the contention of the accused that blank cheques given by him in good faith were misused. He further held that the accused has not committed any offence under Section 138 of the Act. Three appeals namely, Criminal Appeal Nos. 270/1996, 271/1996 and 272/1996 were filed by the two appellants. The appeals were disposed of by the impugned common judgment."

3. One appeal i.e. Criminal Appeal No. 272/1996 was allowed and the respondent was found guilty of offence punishable under Section 138 of the Act. The other two appeals were dismissed and the order of acquittal was affirmed. The basic conclusion which formed the foundation for upholding the acquittal was that the notices sent did not meet the requirements of law, more particularly, the proviso to Clause (b) of Section 138 of the Act.

4. It has to be noted that one common notice of demand was sent by both the appellants which was served on the respondent. The High Court held that common notice was not in accordance with law and the essential ingredients to bring in application of Clause (b) of proviso to Section 138 of the Act were not there. It was held that when separate cheques were allegedly issued, complainants were different and related to allegedly different loan transactions, a common notice is not contemplated.

5. In support of the appeals, learned Counsel for the appellants submitted that the essence of the notice is to be seen and a bare reading of the notice, even though it is a consolidated one, shows that the requirements of Clause (b) of proviso to Section 138 of the Act are met, it is sufficient and both the trial Court and the High Court have failed to consider this aspect. It was submitted that the substance and not form should have primacy, and if sufficient compliance is there, question of deficiency does not arise.

6. Per contra, learned Counsel for the respondent submitted that the requirements being statutory and mandatory, there is no question of any substantial compliance with the requirement being considered to be sufficient, particularly, when the compliance relates to allegation of an offence being committed. With reference to the notice in question, it was submitted that the same was vague.

7. The only question for consideration by us is whether the notice in question purportedly issued under Clause (b) of proviso to Section 138 of the Act was valid or not. Section 139 of the Act has also relevance and needs reference. We extract below Sections 138 and 139 of the Act:

> "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) x 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 15 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 15 days of the receipt of the said notice.

139. Presumption in favour of holder- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability."

8. As was observed by this Court in *Central Bank of India and Anr. v. Saxons Farms and Ors.*[1] the object of the notice is to give a chance to the drawer of the cheque to rectify his omission. The demand in the notice has to be in relation to 'said amount of money' as described in the provision. The expression 'payment of any amount of money' as appearing in the main portion of Section 138 of the Act goes to show it needs to be established that the cheque was drawn for the purpose of discharging in whole or in part of any debt or any liability, even though the notice as contemplated may involve demands for compensation, costs, interest etc. The drawer of the cheque stands absolved from his liability under Section 138 of the Act if he makes the payment of the amount covered by the cheque of which he was the drawer within 15 days from the date of receipt of notice or before the complaint is filed.

9. In *Suman Sethi v. Ajay K. Churiwal and another*[2] it was held that the legislative intent as evident from Section 138 of the Act is that if for the dishonoured cheque the demand is not met within 15 days of the receipt of the notice the drawer is liable for conviction. If the cheque amount is paid within the above period or before the complaint is filed, the legal liability under Section 138 ceases to be operative and for the recovery of other demands such as compensation, costs, interests etc. separate proceedings would lie. If in a notice any other sum is indicated in addition to the amount covered by the cheque, that does not invalidate the notice.

10. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence : (1) drawing of the cheque by a person on an account maintained by him with a banker, for payment to another person from out of that account for discharge in whole/part any debt or liability, (2) presentation of the cheque by the payee or the holder in due course to the bank, (3) returning the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum covered by the cheque, (4) giving notice in writing to the drawer of the cheque within 15 days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid demanding payment of the cheque amount, (5) failure of the drawer to make payment to the

payee or the holder in due course of the cheque, of the amount covered by the cheque within 15 days of the receipt of the notice.

11. Strong reliance was placed by learned Counsel for the appellants in Suman Sethi's case (supra) to contend that if the indication in the notice of other amounts than that covered by the cheque issued, does not as held by this Court invalidate the notice, there is no reason as to why a consolidated notice for two complainants cannot be issued. The extreme plea as is sought to be raised in this case based upon Suman Sethi's case (supra) is clearly untenable. Though no formal notice is prescribed in the provision, the statutory provision indicates in unmistakable terms as to what should be clearly indicated in the notice and what manner of demand it should make. In Suman Sethi's case (supra) on considering the contents of the notice, it was observed that there was specific demand in respect of the amount covered by the cheque and the fact that certain additional demands incidental to it, in the form of expenses incurred for clearance and notice charges were also made did not vitiate the notice. In a given case if the consolidated notice is found to provide sufficient information envisaged by the statutory provision and there was a specific demand for the payment of the sum covered by the cheque dishonoured, mere fact that it was a consolidated notice, and/or that further demands in addition to the statutorily envisaged demand was also found to have been made may not invalidate the same. This position could not be disputed by learned Counsel for the respondent. However, according to the respondent, the notice in question is not separable in that way and that there was no specific demand made for payment of the amount covered by the cheque. We have perused the contents of the notice. Significantly, not only the cheque amounts were different from the alleged loan amounts but the demand was made not of the cheque amounts but only the loan amount as though it is a demand for the loan amount and not the demand for payment of the cheque amount; nor could it be said that it was a demand for payment of the cheque amount and in addition thereto made further demands as well. What is necessary is making of a demand for the amount covered by the bounced cheque which is conspicuously absent in the notice issued in this case. The notice in question is imperfect in this case not because it had any further or additional claims as well but it did not specifically contain any demand for the payment of the cheque amount, the non-compliance with such a demand only being the incriminating circumstance which expose the drawer for being proceeded against under Section 138 of the Act. That being the position, the ultimate conclusion arrived at by the trial Court and the High Court do not call for interference in these appeals, though for different reasons indicated by us. The appeals are, accordingly dismissed.

Appeal dismissed.

[1] *(1999 (8) SCC 221)*
[2] *2000 (2) SCC 380*