SUPREME COURT OF INDIA

N Paraeswaran Unni .

Vs.

G Kannan

Crl.A.No.455 of 2006

(N.V.Ramana and Prafulla C.Pant,JJ.,)

01.03.2017

JUDGMENT

N.V. Ramana,J.,

1. This appeal arises out of the judgment and order dated 06-10-2003 passed by the High Court of Kerala at Ernakulam in Criminal Revision Petition No. 644 of 1995 whereby the High Court allowed the criminal revision of the first respondent by setting aside the concurrent judgments of Trial Court and Appellate Court, that first respondent cannot be convicted under Section 138 of the Negotiable Instruments Act, 1881 (in short "N.I. Act") as the procedure prescribed under this section was not satisfied in the instant case.

2. Brief facts leading to this criminal appeal, as per the prosecution case, are that the first respondent/accused borrowed Rs. 64,000/- on 13-10-1990 from the appellant/complainant. In lieu of the borrowed amount, first respondent issued two cheques dated 13-10-1990 for Rs. 10,000/- and Rs. 25,000/- respectively both drawn on State Bank of India, Alappuzha Branch. Another cheque for Rs. 29,000/- dated 08-10-1990 was also given to the appellant by first respondent, which was issued by one K Rajesh, Development Officer, LIC drawn on State Bank of Travancore, Vadai Canal branch, Alappuzha.

3. Appellant presented first-two cheques dated 13-10-1990 on 04-04-1991 to his bank, State Bank of Travancore, Main branch, Alappuzha. First respondent's bank returned the said two cheques on 05-04-1991 with an endorsement "Refer to drawer." Appellant received intimation memo dated 05-04-1991 from his bank on 08-04-1991.

4. Appellant got issued a legal notice on 12-04-1991 to the first respondent, which was returned with postal endorsement "intimation served, addressee absent" on 20-04-1991. The same was received by the appellant's advocate on 25-04-1991. Appellant again sent the legal notice on 04-05-1991. The second notice sent to first respondent's address was returned with postal endorsement "Refused, returned to sender." Thus, according to the appellant, first respondent failed to return the borrowed amount Rs. 64,000/- for which statutory notice

under proviso (b) of Section 138 of N.I. Act was issued to him to make good the dishonoured cheques due to insufficiency of funds in his bank account.

5. On 23.05.1991 appellant lodged a private complaint before the Judicial First Class Magistrate-II, Alappuzha for the alleged offence under Section 138 of the N.I. Act, which was numbered as Summary Trial No. 34/92. After a full fledged trial and upon appreciating the documentary evidence adduced on behalf of the parties, the Trial Court allowed the complaint as the appellant was successful in proving, the case beyond reasonable doubt that first respondent committed an offence punishable under Section 138 of the N.I. Act. Accordingly, the Trial Court by judgment dated 29-07-1993 convicted and sentenced the first respondent to undergo simple imprisonment of three months.

6. Aggrieved by the conviction and sentence, first respondent preferred Criminal Appeal No 104 of 1993 before Addl. Sessions Judge at Alappuzha. The Ld. Judge, after perusing the records and on elaborate hearing, by its judgment dated 07-07-1995 dismissed the appeal by upholding and confirming the judgment of the Trial Court.

7. Against the said order, respondent preferred Criminal Revision no 644 of 1995 before the High Court of Kerala. The only ground raised before the High Court was that the provisions of Section 138 of the N.I. Act cannot be invoked as the appellant had not complied with the conditions in Clause (b) of the proviso to the said section. Notice demanding payment of the amount arising from the two dishonoured cheques in question was on 04-05-1991, whereas the intimation regarding dishonour of the said cheques was given by the appellant's bank on 08-04-1991. Therefore, the notice was beyond 15 days. Hence, in such circumstances Section 138 of the N.I. Act was not attracted and no offence was made out.

8. The High Court by its judgment dated 06-10-2003 had allowed the revision by reversing the concurrent findings of the two Courts below holding that the statutory notice was beyond the prescribed limitation period as mentioned under Section 138 of the N.I. Act.

9. Now the issue before us is even though the first notice was issued by the appellant within time to the correct address of the first respondent, whether the High Court was right in rejecting the case of the appellant herein on the ground that second notice was issued beyond the period of limitation i.e. 15 days from the date of receiving dishonour intimation from the bank under Clause (b) of the proviso to Section 138 of the N.I. Act.

10. Before delving into the issue, it would be appropriate to reproduce Section 138 of the Act, as it then stood. 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 two years, 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;
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> (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
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> (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.
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> Explanation.-For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability. "

11. A bare reading of Section 138 of the N.I. Act, indicates that the purport of Section 138 is to prevent and punish the dishonest drawers of cheques who evade and avoid their liability. As explained in Clause (b) of the proviso, the payee or the holder of the cheque in due course is necessarily required to serve a written notice on the drawer of the cheque within fifteen days from the date of intimation received from the bank about dishonour.

12. It is explicitly made clear under Clause (c) of Section 138 of N.I. Act, that this gives an opportunity to a drawer of the cheque to make payment within fifteen days of receipt of such notice sent by the drawee. It is manifest that the object of providing Clause (c) is to avoid unnecessary hardship. Even if the drawer has failed to make payment within fifteen days of receipt of such notice as provided under Clause (c), the drawer shall be deemed to have committed an offence under the Act and thereafter the drawee would be competent to file complaint against the drawer by following the procedure prescribed under Section 142 of the Act.

13. It is clear from Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act, 1972, that once notice is sent by registered post by correctly addressing to the drawer of the cheque, the service of notice is deemed to have been effected. Then requirements under proviso (b) of Section 138 stands complied, if notice is sent in the prescribed manner. However, the drawer is at liberty to rebut this presumption.

14. It is well settled that interpretation of a Statute should be based on the object which the intended legislation sought to achieve.

"It is a recognized rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning, the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its ***power invalid***[1]" .

15. This Court in catena of cases has held that when a notice is sent by registered post and is returned with postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be ***presumed***[2]**.** Though in process of interpretation right of an honest lender cannot be defeated as has happened in this case. From the perusal of relevant sections it is clear that generally there is no bar under the N.I. Act to send a reminder notice to the drawer of the cheque and usually such notice cannot be construed as an admission of non-service of the first notice by the appellant as has happened in this case.

16. Moreover the first notice sent by appellant on 12-04-1991 was effective and notice was deemed to have been served on the first respondent. Further, it is clear that the second notice has no relevance at all in this case at hand. Second notice could be construed as a reminder of respondent's obligation to discharge his liability. As the complaint, was filed within the stipulated time contemplated under Clause (b) of Section 142 of the N.I. Act, therefore Section 138 r/w 142 of N.I. Act is attracted. In the view of the matter, we set aside the impugned judgment of the High Court.

17. However, during the course of hearing, learned counsel for first respondent, as agreed by appellant herein, submitted that first respondent was willing to pay Rs. 2,00,000/- (Rupees two lakhs only) in lieu of suffering simple imprisonment of three months as imposed by the Trial Court, as confirmed by the first Appellate Court, and endorsed by this Court.

18. In view of the undertaking given by the learned counsel, we direct the first respondent to deposit the said amount of Rs. 2,00,000/- (Rupees two lakhs only) before the Judicial First Class Magistrate-II at Alappuzha on or before 30.04.2017. Out of the said amount of Rs. 2,00,000/- (two lakhs only) so deposited, Rs.1,30,000/- (one lakh thirty thousand) shall be paid to the appellant as compensation.

19. In the event, first respondent fails to deposit the said amount of Rs.2,00,000/- within the stipulated period as indicated above, the conviction and sentence of three months awarded by the Ld. Trial Court and affirmed by the Appellate Court shall stand restored and bail granted to the first respondent shall stand cancelled.

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[1] *M/S New India Sugar Mills Ltd. v. Commissioner of Sales Tax, AIR 1963 SC 1207*
[2] *Jagdish Singh v. Natthu Singh, (1992) 1 SCC 647; State of M.P. v. Hiralal, (1996) 7 SCC 523 and V. Raja Kumari v. P. Subbarama Naidu, (2004) 8 SCC 774.*

20. The appeal is accordingly disposed of in the aforesaid terms.