

Y. Krishnamurthy Vs. Sharanappa

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SooperKanoon Citation : sooperkanoon.com/374942

Court : Karnataka

Decided On : Dec-04-1997

Reported in : 1998(2)ALD(Cri)264; 1998(2)ALT(Cri)273; [1999]96CompCas205(Kar); ILR1998KAR333; 1998(2)KarLJ1

Judge : R.P. Sethi, C.J. and ;A.M. Farooq, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Negotiable Instruments Act, 1881](#) - Sections 138 and 142

Appeal No. : Criminal Petitions Nos. 1997 and 1998 of 1995

Appellant : Y. Krishnamurthy

Respondent : Sharanappa

Advocate for Def. : Shreesaila Turkani, Adv.

Advocate for Pet/Ap. : G. Manivannan, Adv.

Judgement :

R.P. Sethi, C.J.

1. For resolving the judicial dissent expressed by two Hon'ble judges of this court, the matter has been referred to us for resolving the controversy by,an authoritative pronouncement. The conflicting views are found in the judgments of justice A. B. Murgod delivered in D. Puttaswamy v. Ramahrishna (Criminal Revision Petition

No. 146 of 1995, decided on April 3, 1995), and of justice B. N. Mallikarjuna in G. Ekantappa v. State of Karnataka : ILR 1997 KAR1014 . The controversy relates to the interpretation of the provisions of sections 138 and 142 of the [Negotiable Instruments Act, 1881](#) (hereinafter called 'the Act'). The point for consideration is to determine the period of limitation prescribed under section 142 for filing the complaint for an offence under section 138 of the said Act.

2. In order to appreciate the rival contentions of learned counsel for the parties it is necessary to have a reference to the provisions of the aforesaid two sections. Section 138 prescribes :

'Dishonor 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 cheques 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'.

3. Section 142 prescribes :

'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;

(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.'

4. While deciding Criminal Revision Petition No. 146 of 1995, Murgod J., held :

'It is open to the holder of the cheque to make repeated presentations for encashment within a period of six months from the date on which the cheque is drawn or within the period of validity of the cheque whichever is earlier. But, when once a notice of demand is issued after the Dishonor of the cheque and the same is served on the drawer the cause of action to prosecute him begins to run and there is no stopping the same. If the complainant chooses to prosecute the drawer of the cheque for the alleged offence under section 138 of the Act, he has to file the complaint before the competent magistrate within a period of one month from the date of accrual of the cause of action under clause (c) of the proviso to section 138 of the Act. If he fails to file the complaint within the limitation period provided in section 142 of the Act, his complaint filed subsequently becomes barred by time and no action can be taken on such a complaint barred by time. Therefore, the

contention of the petitioner in the case that the cause of action for the complaint filed on March 20, 1992, accrued after notice of demand was issued and served on the second presentation of the cheque and its Dishonor ignoring the first presentation of the cheque, and the cause of action accrued thereon with issuance of demand notice in that behalf is in time is unsustainable. This is also the view taken in the decision of the High Court of Kerala in *K. Chellakkannu Nadar v. Chenkal M. R. Simon* (1994) CrL. LJ 3515; (1995) 84 Comp Cas 439, which followed the decision of the Division Bench of the same court in *Kumaresan v. Ameerappa* (1992) 74 Comp Cas 848; (1992) 1 Crimes 23 (Ker). In that case, the court has ruled that the payee cannot have a second cause of action on the same cheque when once he had failed to institute a complaint on the strength of the first cause of action. The High Court of Andhra Pradesh in *Syed Rasool and Sons v. Aildas and Co.* (1992) CrL. LJ 4048; (1993) 78 Comp Cas 738 has taken the view that filing of a complaint under section 138 read with section 142 of the Act can be done only once. Therefore, the contention that the complaint dated March 20, 1992, is not maintainable when the respondent failed to file a complaint on the basis of the notice of demand issued on the Dishonor of the cheque on the first presentation of it and duly served needs to be upheld.'

5. However, justice B. N. Mallikarjuna took a different view in the matter and held (page 832 of 93 Comp Cas) :

'In interpreting section 138 of the Negotiable Instruments Act, courts have held that repeated presentation of the cheque for encashment is permitted within six months or within the date of its validity, whichever is earlier. Therefore, every time the cheque is Dishonored within that period, the payee could issue notice to the drawer calling upon him to make payment with a threat of prosecution if he so desires and only when the drawer fails to make payment within fifteen days from the date of the receipt of that notice, it matures into an offence. Even in such circumstance, the payee may not choose to prosecute the drawer for one reason or the other or it may be for the reason that the drawer approaches him requesting to wait and present it after some time. In such circumstances, if the payee obliges the drawer and presents the cheque after some time and if the cheque were to be bounced again for insufficiency of funds or for any reason that would again give

rise to an action for the drawer to issue notice under section 138(b) calling upon the drawer to make payment and failure to make payment within fifteen days gives rise to a fresh cause of action. It is for the payee to decide as to whether a prosecution for an offence under section 138 of the Act be initiated or not. But, it would not be correct to say that the moment the cheque is Dishonored and a notice has been issued calling upon the drawer to make payment and on his failure to make payment within fifteen days, the cause of action would arise for initiating proceedings and if that opportunity is not availed of, the complainant cannot initiate criminal proceedings on the basis of second or subsequent Dishonor. What is required is that the cheque should have been presented within six months or within its validity as required under section 138(a) of the Act. Further, the complainant has to make out that a notice of demand was issued to the drawer within fifteen days from the date the cheque was last returned for want of sufficient funds and the drawer has failed to make payment within fifteen days from the date of receipt of that notice and the complaint should be within one month from that day.'

6. Chapter XVII of the Act comprises sections 138 to 142. The present chapter XVII was introduced by section 4 of the Banking, Public Financial institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (Act No. 66 of 1988), under the nomenclature, 'Of penalties in case of dishonor of certain cheques for insufficiency of funds in the accounts'.

7. At the time of introduction of the Bill it was declared in the Statement of Objects that the amendment was being made to achieve the various objectives detailed therein. One of the objectives specified was ((1989) 65 comp Cas (St.) 140, 155) :

'to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due o insufficiency of funds in the accounts or for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to present harassment of honest drawers.'

8. It appears that the Chapter was substituted keeping in view the apprehended incalculable loss likely to be suffered in case the cheque was dishonored. It was intended to provide a speedy remedy to avoid injury or inconvenience to the payee

or endorsee in view of the fact that due to the latter's unexpected disappointment he will have to bite the dust while meeting his own future commitments made to others. The provision was made despite existence of the speedy remedy for the recovery of the amount payable under a negotiable instrument. To ensure promptitude in availing of relief against the defaulters, the Legislature in its wisdom thought it fit to substitute the Chapter with the object of assigning credibility and dependability to negotiable instruments (cheques). Feeling that the civil remedy for recovery and compensation was not adequate to insure the confidence sought to be achieved in favour of the payee or endorsee of negotiable instruments like cheques criminal prosecution was envisaged and provided in the larger interests of the persons and group of persons for whose benefit the Act had been enacted. The interests of honest and innocent drawers have been adequately protected by this Chapter. As the section is a departure from the usual remedies available in a civil court under the Act, the provisions are required to be strictly and Punctually observed in the manner prescribed.

9. Keeping in view the purpose and object for which the Chapter was substituted in the Act, the meanings are required to be assigned to, 'the cause of action', as mentioned in section 142 of the Act. A perusal of sections 138 and 142 of the Act shows that a complaint has to be filed within one month of the date on which the cause of action arises under clause (c) if the proviso to section 138. The aforesaid clause provides that the ability under section 138 would not arise unless the drawer of the cheque is shown to have failed to make the payment of the 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 notice contemplated under the said section. The notice envisages affording an opportunity to the payee to make the payment with intimation that in case the payment was not made criminal prosecution were to ensue. The payee or the endorsee of the cheque, therefore, has the liberty to present the cheque as many time as he likes within the period of six months but once he serves a notice upon the drawer, the cause of action shall be deemed to have commenced and the period of limitation started to run. It is the acknowledged position under law that once the period of limitation starts to run it cannot stop for any reason. The cause of action under the sections, for the purposes of filing the complaint, cannot be presumed to arise merely on the

cheque being Dishonored but shall be deemed to have arisen after giving the notice of demand of the amount of the cheque by the payee or holder in due course of the cheque coupled with the failure of the drawer to make the payment within 15 days of the date of service/ receipt of notice. A complaint for the alleged commission of offence under section 138 of the Act is, therefore, required to be filed within one month from the date of the cause of action which starts from expiry of 15 days from the date of service of notice to the drawer. From the scheme of Chapter XVII of the Act, it transpires that the Legislature had not contemplated more than one cause of action on the same cheque. Though successive presentations of the cheque are permissible under law yet successive notices for the purposes of determining the cause of action are not conceived. The Legislature cannot be imputed to have intended to subject a transfer of a negotiable instrument to repeated prosecutions and convictions on the strength of one document.

10. In view of what has been noted herein we have come to the conclusion that the law laid down in *D. Puttaswamy v. Ramakrishna* (Criminal Revision Petition No. 146 of 1995, decided on April 3, 1995) is the correct proposition of law. To arrive at this conclusion, we have found support from various single and Division Bench judgments such as *Kurmaresan v. Ameerappa* (1992) 74 Comp Cas 848; (1992) 1 Crimes 23 (Ker), *K. Chellakkhannu Nadar v. Chenkal M. R. Simon* (1993) MWN 221, (1995) 84 Comp Cas 439 (Ker), *Hamosons Apparels Pvt. Ltd. v. Sivan Textiles* (1993) MWN 228 (Ker), *K. D. Sales Corporation v. Morinda Co-operative Sugar Mills Ltd.* (1993) MWN 233 (P&H;), *Dynamatic Forgings India Ltd. v. Nagarjuna Investment Trusts Ltd.* (1993) MWN 237 (AP), *K. P. V. Textiles v. Malook Chand Naresh Chand* (1992) 3 Crimes 594.

11. We are of the opinion that the law laid down in *G. Ekantappa v. State of Karnataka*, : ILR 1997 KAR1014 , in so far as it relates to the interpretation of sections 138 and 142 of the Act in relation to the cause of action and the period of limitation for filing the complaint is not correct which is required to be overruled.

12. However, despite holding that the holder of the cheque has the right to make repeated presentations for encashment within a period of six months from the date

of its issue or within the period of validity of the cheque, whichever is earlier, once a notice of demand is issued consequent upon the Dishonor of the cheque, the cause of action to prosecute the drawer starts to run and the complaint is required to be filed within the period provided under section 142 of the Act. Yet we are of the opinion that the petitioner in these cases is not entitled to any relief as his petition filed under section 482 of the Criminal Procedure Code is totally misconceived and untenable.

13. Section 482 corresponding to section 561A of the old Criminal Procedure Code confers inherent powers upon the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of process of any court or otherwise to secure the ends of justice. Such a power is required to be sparingly used and not liberally invoked. The inherent power has to be distinguished from the appellate power vested in a superior court. The inherent power can be exercised only for the purposes specified in this section and cannot be invoked in respect of any matter covered by any other specific provision of the Code. The section only preserves the inherent power of this court without conferring any additional powers. Such a power can be used where it manifestly appears that there was a legal bar against the institution or continuance of the criminal proceedings in respect of the alleged offence or where the allegation in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged or where the allegation against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. However, in exercising its jurisdiction under section 482, the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not which is the function of the trial magistrate. In such cases, the, Supreme Court held that where the allegations made against the petitioner in the FIR or the complaint prima facie constitute certain offence alleged against him, there was no legal bar to the institution of the proceedings commenced on the FIR or the complaint and their continuance.

14. The Hon'ble Supreme Court in R. P. Kapur v. State of Punjab, : 1960 CriLJ1239 , while determining the nature and scope of inherent powers of the High

Court under the then section 561A of the Criminal Procedure Code held (page 868) :

'Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court under section 561A of the Code. The said section saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case the magistrate before whom the police report has been filed under section 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceedings in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceedings the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute

the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under section 561A, the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under section 561A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (vide *Shripad G. Chandavarkar, In re*, AIR 1928 Bom 184, *Jagat Chandra Mozumdar v. Queen-Empress* (1898-99) ILR 26 Cal 786, *Dr. Shankar Singh v. State of Punjab*, , *Nripendra Bhusan Roy v. Gobinda Bandhu Majumdar* : AIR1924 Cal1018 , and *Ramanathan Chettiyar v. Sivarama Subramania*, AIR 1925 Mad 39; ILR 47 Mad 722.'

15. It may be noticed that while incorporating section 397 or section 482 of the Criminal Procedure Code, the Legislature had intended to restrict the exercise of the revisional and inherent powers with the object of avoiding Unnecessary delay and protracting of litigations. The revisional powers was held to be not applicable in relation to an interlocutory order passed on any appeal, enquiry, trial or any other proceedings. Summoning of the accused by issuance of the process may in

specified, cases be held to be an Interlocutory order. If an order could not be set aside in exercise of the revisional powers, the same cannot be prayed to be quashed by invoking the powers of this court under section 482 of the Criminal Procedure Code. The dominant purpose of the amended Criminal Procedure Code is achieve speedy determination and determination with utmost despatch. The provisions of the Code are, therefore, required to be interpreted in a manner so as to eliminate all possible avenues of delay or means of dilatory tactics by plugging every possible loophole, through which the disposal of the case may be delayed. The interlocutory orders are such orders which are not final orders and do not result in termination of the Proceedings. Such orders merely decide some point or matter essential to the progress of the proceedings. The nature of the order is required to be determined in the light of the facts of each case. In appropriate cases, the summoning of the accused or the issuance of the process may not amount to an interlocutory order requiring interference by the High Court if otherwise permissible. There may be cases where some orders may fall in between the category of interlocutory and final orders. However, it can be said that when the plea is raised by an accused person and rejected by the magistrate or the court on a point which, when accepted, would conclude the proceedings, such an order be not an interlocutory order within the meaning of section 397(2) of the Criminal Procedure Code.

16. In *Amar Nath v. State of Haryana*, : 1977 CriLJ1891 , the Supreme Court observed (page 2189) :

'It seems to us that the term 'interlocutory order' in section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending

proceeding, may no doubt amount to interlocutory orders against which no revision would lie under section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory orders so as to be outside the purview of the revisional jurisdiction of the High Court.'

17. In *Madhu Limaye v. State of Maharashtra*, : 1978 CriLJ165 , the court observed (page 50 of AIR 1978 SC) :

'In *Amar Nath v. State of Haryana*, : 1977 CriLJ1891 , as in this, the order of the trial court issuing process against the accused was challenged and the High Court was asked to quash the criminal proceeding either in exercise of its inherent power under section 482 of the 1973 Code corresponding to section 561A of the Code of Criminal Procedure, 1898-hereinafter called 'the 1898 Code' or 'the old Code', or 'under section 397(1) of the new Code corresponding to section 435 of the old Code'. Two points were decided in *Amar Nath v. State of Haryana*, : 1977 CriLJ1891 , in the following terms :

'(1) While we fully agree with the view taken by the learned judge that where a revision to the High Court against the order of the Sub- ordinate judge is expressly barred under sub-section (2) of section 397 of the 1973 Code the inherent powers contained in section 397(2) would not be available to defeat the bar contained in section 397(2).'

18. Assuming that the order of summoning the accused person, in the instant case, was not an interlocutory order, the same could be quashed only after applying the tests laid down in *R. P. Kapur v. State of Punjab*, : 1960 CriLJ1239 , and consistently followed thereafter.

19. The question to be considered, in the instant case, is as to whether on the basis of the allegations made in the complaint, no case is made out against the petitioner for the issuance of process against him. If the reply is in the affirmative, the proceedings shall be quashed. But if in order to accept the submissions of the petitioner, reference is required to be made to such documents which are not part of the record of the magistrate, jurisdiction under section 482 of the Criminal

Procedure Code, can not be invoked. Prima facie, if the allegations made in the present complaint are taken to be correct, it cannot be said that no case was made out against the petitioner. In the instant case, the petitioner alleges and the respondent does not accept that upon Dishonor of the cheques, two notices were issued by the respondent and if the alleged notice first in time is taken to be giving cause of action to him, the complaints filed are required to be barred by time. In view of disputed questions, this court is not in a position to exercise its power under section 482 of the Criminal Procedure Code. The criminal petitions are, therefore, misconceived and liable to be dismissed.

20. We are of the opinion that under normal circumstances, an accused person should not be liberally permitted to approach this court for exercise of jurisdiction either under section 397 or 482 of the Criminal Procedure Code. The aggrieved person be insisted upon to first approach the magistrate or the court where the proceedings are pending for discharging him under section 245(2) or dropping the proceedings under section 258 of the Criminal Procedure Code. Such a course would be beneficial and convenient both to the accused and the complainant. In that event, this court will also be in a better position to appreciate the rival contentions in the light of the adjudication made by the magistrate or the court. In this way, the object of the Code for minimising the litigation and avoiding the delay could also be achieved.

21. Despite holding the position of the law in favour of the petitioner, as canvassed before us, we are not inclined to interfere with the proceedings at this stage. The petitions have no merit and are accordingly dismissed. The petitioner is, however, given liberty of approaching magistrate for dropping the proceedings in accordance with the provisions of the Criminal Procedure Code and the observations made hereinabove. If such an application is filed, the same shall be considered and disposed of by the magistrate, according to law, after affording the parties an opportunity of rebutting each other's contentions and making submissions in support of their cases. No costs.