

Bhadran Vs. Sunil Kumar

Bhadran Vs. Sunil Kumar

SooperKanoon Citation : sooperkanoon.com/723846

Court : Kerala

Decided On : Mar-09-2005

Reported in : 2006(1)ALD(Cri)39; IV(2005)BC452; [2005]127CompCas930(Ker); 2005(2)KLT696

Judge : J.M. James, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138 and 142; General Clauses Act - Sections 27

Appeal No. : Crl. A. No. 584 of 1999

Appellant : Bhadran

Respondent : Sunil Kumar

Advocate for Def. : R.K. Venu Nayar, Adv. and; P.M.A. Kalam, Public Prosecutor

Judgement :

J.M. James, J.

1. A question has come up for consideration of this Court that when a notice sent by the payee to the drawer of the cheque, intimating him of the dishonour of the cheque and demanding the cheque amount, is returned unserved for the reason of addressee having left the place and notice could not be served for want of latest address of the drawer, whether would enable the payee to present the said

cheque again, and then file a complaint, on the cause of action thus arising due to the dishonour of the cheque, on the second presentation.

2. The facts of the case are that Ext.P-1 cheque was presented for clearance. It was returned dishonoured as per Ext.P-2 memo dated 1.9.1989. The appellant issued notice dated 9.9.1989. When the postman took the registered letter to the addressee, he found that the addressee had gone to Velloor. He could not get Velloor address of the addressee. Therefore, he returned the notice unserved, putting the date of return as 10.9.1989. The same has been marked as Ext.P-4. After receipt of Ext.P-4, the complainant presented Ext.P-1 cheque for clearance again. It was returned dishonoured on 7.10.1989. Thereafter, he issued notice dated 12.10.1989. However, neither the registered article nor the postal acknowledgement card was received. The complainant filed complaint against the respondent, accused, on 21.11.1989. According to the respondent, as the cause of action arose, after the return of Ext.P-4 notice, on 10.9.1989, received by the sender on 20.9.1989, and the complaint filed on 21.11.1989, as stated above, was belated. The respondent also took up the contention that the cause of action arose on sending of Ext.P-4 notice and, therefore, presentation of the cheque for the second time, after receipt of Ext.P-4 notice, is against law, there being no subsequent cause of action. Hence the complaint is not maintainable. The Court below, accepting the principle laid down in *Sadanandan Bhadran v. Madhavan Sunil Kumar*, 1998 (2) KLT 765 (SC) = (1998) 6 SCC 514, dismissed the complaint. Hence this appeal.

3. In *Sadanandan Bhadran's* case, cited above, on dishonour of the cheque, a notice was issued which was received by the drawer and he requested for time for payment. Therefore, the sender did not file any complaint. But, the drawer failed to pay the cheque amount as agreed. The sender re-presented the cheque for clearance. On dishonour, for want of sufficient funds, he filed complaint. Accepting the Division Bench ruling of this Court in *Kumaresan v. Ameerappa*, 1991 (1) KLT 893, that there could not be more than one cause of action in respect of a single cheque, the complaint was found to be not maintainable and, therefore, the Magistrate dismissed the complaint and acquitted the accused. It was upheld, by the High Court, relying on *Kumaresan's* case. This decision has been later,

overruled by a Full Bench of this Court in *Lakshmanan v. Sivaramakrishnan*, 1995 (1) KLT 259 (F.B.) = 1995 Cr.L.J. 1384 (Ker.) (F.B.). The said finding of the High Court was challenged before the Apex Court. The Court consolidated and considered three different propositions that have been laid down by one or the other High Courts of India. After interpreting Section 138 and Section 142 of the [Negotiable Instruments Act, 1881](#) (in short 'the Act') together with interpretations of the Act by various High Courts, the supreme Court drew up premises to prove an offence under Section 138 of the Act as;

- (i) the cheque was drawn for payment of an amount to discharge a debt or liability and the cheque was dishonoured;
- (ii) cheques should have been presented within its validity period;
- (iii) when it is returned unpaid, send up a demand notice by registered post;
- (iv) the drawer failed to pay the amount within 15 days on the receipt of the notice.

The above facts will create the cause of action.

4. The interest of the payee is to get money covered under the cheque. Various High Courts have held that the payee could present the cheque for any number of times, during the period of its validity, except this Court in *Kumaresan 's case* where it held the view that the first dishonour of the cheque alone is valid for cause of action, until reversed in *Lakshmanan v. Sivaramakrishnan*, 1995 (1) KLT 259 (F.B.) = 1995 Cr.L.J. 1384 (Ker.) (F.B.). All other High Courts held that there could be only one cause of action when the notice is sent after the last dishonour of the cheque and the cheque amount not paid. The Apex Court agreed with the view that the payee is having the right to repeatedly present the cheque for clearance, but held that he has got only one opportunity to file the complaint on its dishonour. Reconciling and harmonising the position of law, the Apex Court further held that the payee may, without taking pre-emptory action, in exercise of his right under Clause (b) of the proviso to Section 138 of the Act, go on presenting the cheque, at any point of time during the validity of the cheque. But, once the payee gives a notice under the above Clause (b) of the proviso, he forfeits his right, to present

the cheque again, for in case of failure of the drawer to pay the money within the stipulated time, he would be liable for the offence and the cause of action for filing the complaint will arise.

5. In *Bhaskaran v. Balan*, 1999 (3) KLT 440 = (1999) 7 SCC 510, the Supreme Court considered the difference between 'giving of notice' and 'receipt of notice' and held that 'giving of notice' in the context of Section 138 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. The Supreme Court dealt with the meaning of service by post and Section 27 of the General Clauses Act. Considering the facts of that case, the Court found that the accused therein had taken a stand that the notice of dishonour, had not been received by them and, at the same time, praying for dismissal of the complaint on the plea that the complaint was barred by time, in view of the notice served on the appellant, which they had not received. The Court found that the plea was contradictory, meant only to resist the claim of the complainant and thereby to frustrate the provisions of law.

6. In the case at hand, the endorsement in Ext.P-4 show that when the notice had gone, as sent by the complainant, to the drawer, he left to Velloor. The postal authorities returned with an endorsement 'Return the same to the sender'. Thus according to me, the dishonour of the cheque, at the first instance, had not been informed to the respondent-accused and, he has not 'received' any notice as contemplated under Section 138(c) of the Act. Therefore, there was no 'giving of notice' and 'receipt' of the same. Hence no cause of action arose as per the premises drawn up by the Supreme Court and discussed earlier. In such situation, if the complainant had resorted to the presentation of the cheque again, the complainant had only exercised his right of representing the cheque within the period of its validity. Ext.P-4 was not a notice, that had been received by the accused, thereby barring the right of the complainant in presenting the cheque again, as permitted by law.

7. The accused has also got no case that he had received Ext.P-4 notice or, at least, known the contents therein, and hence it should be construed as valid notice

basing on the first dishonour dated 9.9.1989. Therefore, the actual dishonour based on which, the complainant had sent notice, as per the law, was under Ext.P-3. Therefore, the principle contained in Sadanandan Bhadran's case cited supra, cannot be accepted as applicable to the facts of this case which are entirely different.

In view of the above discussions, I set aside the impugned judgment and restore C.C.No.265/97 on the file of the J.F.C.M-I, Kollam. The learned Magistrate is directed to dispose of the case as per the law within two months from the date of appearance of the parties before that Court. The parties shall appear before the Magistrate Court on 4.4.2005.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com