

immanuel Vs. Rajappan

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Court : Kerala

Decided On : Apr-07-2003

Reported in : III(2003)BC604; 2003(3)KLT113

Judge : G. Sasidharan and; Kurian Joseph, JJ.

Acts : Negotiable Instruments Act - Sections 138

Appeal No. : Crl. A. No. 36 of 1999

Appellant : immanuel

Respondent : Rajappan

Advocate for Def. : T.A. Ramadasan, Adv. and; Cibi Thomas, Public Prosecutor

Advocate for Pet/Ap. : O.V. Maniprasad, Adv.

Judgement :

G. Sasidharan, J.

1. Proviso (b) to Section 138 of the Negotiable Instruments Act says that the payee or the holder in due course of the cheque has to make a demand for payment of the amount of money covered by the cheque 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 the

question which arises for consideration is whether the expression 'receipt of information' used in the above proviso means receipt of information in writing. A learned Judge of this Court Mohamed Shafi, J. held in John v. George Jacob (1999 (2) KLT 699) that the expression 'receipt of information' used in proviso (b) to Section 138 of the Negotiable Instruments Act means receipt of information in writing and not a mere oral information. In the above proviso it is stated that the payee or the holder in due course of the Cheque has to make a demand for payment of the amount by giving a notice in writing. When mentioning about giving of notice it is said that the notice will have to be in writing whereas in saying about receipt of information it is not mentioned in the proviso that the information has to be in writing.

2. Another learned Judge of this Court, Krishnan Nair, J. before whom this appeal came up for hearing, made a reference for the above question being considered and decided by a Division Bench and thus this appeal comes up for consideration before us on reference. In the order of reference what the learned Judge says is that he cannot agree with the view expressed by the learned Judge in John's case (supra) and hence the matter requires consideration by a Division Bench. In this case even though the details of the reasons are not given in the reference order, it is possible to understand from the order that the learned Judge, who made the reference, is of the view that the receipt of information as envisaged in proviso (b) to Section 138 need not be in writing.

3. Chap. XVII was inserted in the Negotiable Instruments Act by the Banking Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 and the provisions in that chapter provide that where any cheque drawn by a person for the discharge of any liability, is returned by the bank unpaid for the reason of the insufficiency of the amount of money standing to the credit of the account on which the cheque was drawn or for the reason that it exceeds the arrangements made by the drawer of the cheque with the bankers of that account, the drawer of such cheque shall be deemed to have committed the offence. The amendment has been made to the Negotiable Instruments Act to enhance the acceptability of cheque in settlement of liabilities by making the drawer liable for the penalties in case of bouncing of cheques due to insufficient arrangements by

the drawer. In making provisions for ensuring the acceptability of cheque in settlement of liabilities sufficient safeguards have also been made to prevent harassment of honest drawers by providing that no Court shall take cognizance of the offence except on a complaint in writing made by the payee or the holder in due course of the cheque. There is also provision which says that the complaint has to be made within one month of the date on which the cause of action arises. The provisions in the above Chapter were incorporated with the specific purpose of safeguarding the faith of the creditor in the drawer of the cheque.

4. The provisions added to the Negotiable Instruments Act by way of amendment in 1988 provide that the cheque in question should have been issued in discharge in whole or in part of a debt or other liability. It is necessary that the cheque has to be presented within six months or its specific validity period whichever is earlier. The payee or the holder in due course of the cheque has to give notice demanding payment within fifteen days of his receiving information regarding the return of the cheque as unpaid. The return of the cheque unpaid should be for the reason that the amount of money standing to the credit of the account is insufficient to honour the cheque or the amount to be paid on honouring the cheque exceeds the amount arranged to be paid from the account of the drawer. Drawer of the cheque can make payment within fifteen days of receipt of notice and only if he fails to do so, he is liable to be prosecuted. Complaint alleging commission of the offence punishable under Section 138 of the Negotiable Instruments Act can be made only by the payee or the holder in due course within one month of the arising of the cause of action. Cause of action arises, if the drawer of the cheque does not make payment within fifteen days of receipt of notice.

5. Proviso (b) to Section 138 specifically says that the notice issued demanding the payment of the amount must be in writing. In the same proviso where it is said that the notice has to be given within fifteen days of receipt of information by the payee or the holder in due course from the bank regarding the return of the cheque as unpaid it is not specifically stated that the information has to be in writing. At the first blush it may appear that since it is specifically stated in the proviso that the notice has to be in writing and in the very same clause it is not specifically stated that the information that is received by the payee or the holder

in due course is to be in writing, the legislative intent was that the receipt of information need not be in writing. Merely for the reason that it is not specifically stated in the above clause of the proviso that the information has to be in writing the interpretation given to that clause need not be that the information received regarding the return of the cheque as unpaid need not be in writing. In interpreting the provision in the above clause in the proviso to the section the purpose for which the provision has been made in the Act along with the other circumstances has to be taken into consideration. An interpretation which would advance the purpose for which the provision has been incorporated in the Negotiable Instruments Act by way of amendment has to be made. Once it is found that there is need for giving information in Writing from the bank regarding the return of the cheque unpaid the mere fact that in the section it is not specifically stated that the information has to be in writing will not stand in the way of giving an interpretation to the provision that the information given from the bank has to be in writing.

6. Where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the Legislature, the Court may modify the language used by the Legislature or even do some violence to it so as to achieve the obvious intention of the Legislature and to produce a rational construction. In interpreting a statute the Court will be justified in reading into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision. Proviso (b) to Section 138 of the Negotiable Instruments Act has to be interpreted with reference to the context of other clauses of the section to make it consistent with those provisions. The object of the section is to make the drawer of the cheque subject to penalty when the cheque bounces on the grounds mentioned in the section. An interpretation taking into account the very object of amending the Negotiable Instruments Act with a view to enhance the acceptability of the cheque by making the drawer liable for penalty in case the cheque bounces for the reasons mentioned in the section, has to be made. The Court should not adopt a strictly literal interpretation of the section but must construe its language having regard to the object and purpose which the Legislature had in view in enacting the provision.

7. The provision in proviso (b) to Section 138 is not that on getting knowledge regarding the return of the cheque unpaid notice has to be issued to the drawer of the cheque, but on receipt of information from the bank regarding the return of the cheque as unpaid notice has to be given. Getting knowledge is different from receipt of information. One can be said to have knowledge of something when he comes to know of that thing but in giving information there is a positive act by a person who gives information to another person. In common parlance 'information' means something told whereas one can have knowledge about a thing by coming to know of that thing by different means. But, on the other hand, when it is said that there will have to be receipt of information that means that one must come to know of something on being told about that. So, the expression 'receipt of information' used in the above proviso to Section 138 of the Act implies that the payee or the holder in due course of the cheque must be told that the cheque was returned unpaid.

8. The provision says that the receipt of information by the payee or the holder in due course has to be from the bank. That would indicate clearly that the payee or holder in due course must get information from the bank. A person, who presents a cheque in a bank for encashment, may get information from a peon working in the, bank that the cheque is dishonoured. It is also possible that some other employee of the bank may tell the person who presents the cheque that the cheque is dishonoured. Is it that information the person, who presents the cheque in the bank for encashment, gets that is envisaged in proviso (b) to Section 138 of the Act. Certainly it is not that information that is mentioned in the above provision. The information is that which he receives from the bank and such an information can only be the information given by the bank officially. The information has to proceed from the bank to the payee or the holder in due course.

9. The information that is received by the payee or the holder in due course must be regarding the return of the cheque as unpaid. Section 138 of the Act provides that the return of the cheque unpaid must be either because the amount of money standing to the credit of the 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 the bank. A cheque may be returned unpaid by the bank for reasons other

than those mentioned in Section 138 of the Act. A person can be prosecuted for the offence under Section 138 of the Act, only if the cheque is returned unpaid for the reasons mentioned in the section. Issuing notice as envisaged in proviso (b) to Section 138 is necessary, only if the return of the cheque unpaid is for the reasons mentioned in the section. The consequence of nonpayment of the amount within fifteen days of receipt of notice is prosecution for committing the offence under Section 138 of the Act. Before issuing notice as envisaged in proviso (b) to Section 138 of the Act the payee or the holder in due course of the cheque must know on what ground the cheque was returned unpaid. That information can be obtained only from the bank. The information regarding the reason for returning the cheque as unpaid has to be authentic so that the payee or the holder in due course of the cheque can proceed to issue notice as envisaged in proviso (b) to Section 138 of the Act. The payee or the holder in due course of the cheque may not be able to issue notice under proviso (b) to Section 138 of the Act merely on getting knowledge that the cheque was dishonoured. He must know before issuing notice the ground on which the cheque was returned unpaid. The reason for returning the cheque as unpaid can only be there in the information given from the bank in writing.

10. Notice envisaged in proviso (b) to Section 138 of the Act is different from the notice mentioned in Section 93 of the Act. Section 93 provides that when a cheque is dishonoured by non-acceptance or non-payment, the holder thereof or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties, whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon. On issuing notice under Section 93 of the Act prosecution for commission of the offence under Section 138 of the Act cannot be launched. For prosecuting a person for committing the offence under Section 138 of the Act notice as envisaged in proviso (b) to Section 138 of the Act has to be issued and that notice has to be one issued after the payee or the holder in due course of the cheque getting information that the return of the cheque unpaid was for any of the reasons mentioned in that section of the Act. Only after getting information from the bank in writing the payee or the holder in due course of the cheque will be able to ascertain the ground on which the cheque is returned unpaid and decide to

proceed to issue notice either under proviso (b) to Section 138 or under Section 93 of the Act. If the return of the cheque unpaid is for any reason other than the reasons mentioned in Section 138 of the Act, the payee or the holder in due course can issue a notice under Section 93 of the Act for making liable the parties who have to pay the amount covered by the cheque.

11. The provision is that the payee or the holder in due course of the cheque should give notice demanding payment within fifteen days of his receiving information regarding the dishonour of the cheque. If an interpretation that the information received from the bank need not be in writing is given, that would lead to the anomalous position that a person, who is being prosecuted alleging commission of the offence under Section 138 of the Act, may be in a position to make an attempt to establish that the payee or the holder in due course had information regarding the dishonour of the cheque even before information from the bank was received in writing. A payee or holder in due course, who receives information from bank in writing, may be under the impression that he need only issue notice within fifteen days of receiving such information in writing. Such a person, who sends notice within fifteen days of getting information in writing regarding the dishonour of the cheque unpaid, can be defeated in his attempt to prosecute the drawer of the cheque by the drawer adducing evidence to show that payee or the holder in due course had information regarding the return of the cheque unpaid even before getting from the bank information in writing. In the above circumstances, giving an interpretation that the information from the bank regarding the return of the cheque as unpaid need not be in writing would have the effect of defeating the purpose for which penal provision has been incorporated in the Negotiable Instruments Act. In the above circumstances, we find that the only interpretation that can be given to the expression 'receipt of information' occurring in proviso (b) to Section 138 of the Act is that the information must be in writing. We find that the interpretation of the expression 'receipt of information' given by Mohamed Shafi, J. in John's case (supra) is correct and it does not need any reconsideration.

12. The appellant in this appeal is the complainant in C.C. 598/1995 on the file of the Judicial Magistrate of First Class, Taliparamba. Appellant filed a complaint in

the above Court alleging that the respondent committed the offence punishable under Section 138 of the Negotiable Instruments Act. The learned Magistrate acquitted the respondent and this appeal is filed challenging the order of acquittal made by the learned Magistrate.

13. The cheque in question bears the date 12.5.1995. P.W.1, the son of the complainant said that the cheque was presented in the bank on 12.5.1995 and even at that time he came to know that the cheque was dishonoured. P.W.1 said that he knew that there was no sufficient amount in the account of the respondent to honour the cheque even on the day on which the cheque was presented for encashment. P.W.1 also said that even though he knew on 12.5.1995 that there was no amount in the account of the respondent for honouring the cheque notice was issued only on 29.5.1999 because he was under the impression that respondent would pay the amount. The learned Magistrate found that the complainant had information regarding the dishonour of the cheque even on 12.5.1995 and hence the notice was not issued within fifteen days of the dishonour of the cheque. The memo informing that the cheque was dishonoured was issued from the bank only on 16.5.1995. The Manager of the bank was examined as P.W.2 and he said that the memo was sent from the bank on 16.5.1995. Since we have already held that the information regarding the return of the cheque unpaid received from the bank has to be in writing the complainant got information as envisaged in proviso (b) to Section 138 of the Act only on 16.5.1995. The notice issued on 29.5.1995 was within fifteen days of receipt of information regarding the return of the cheque unpaid and it was valid notice. We find that there is valid notice issued by the complainant to the respondent.

14. Point No. 3 considered by the trial Court, as is seen from the judgment, is whether the respondent has committed an offence punishable under Section 138 of the Negotiable Instruments Act as alleged. The learned Magistrate under Point No. 3 observed that in view of the finding under Point No. 1 that point did not come up for detailed discussion. Since we now find that there was valid notice issued by the appellant to the respondent, it is necessary that Point No. 3 formulated by the learned Magistrate has to be considered in the light of the evidence available in the case. For that purpose, the case has to be remanded to the trial Court. The

case is remanded to the trial Court. The trial Court will proceed to decide the case in accordance with law on proper appreciation of the evidence available on records. Parties will appear before the trial Court on 23.6.2003.

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