

Chandradasan Vs. George

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Court : Kerala

Decided On : Feb-05-2003

Reported in : III(2003)BC609; 2003(3)KLT151

Judge : G. Sasidharan, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138; General Clauses Act - Sections 10

Appeal No. : Crl. R.P. Nos. 852 and 857 of 2002

Appellant : Chandradasan

Respondent : George

Advocate for Def. : T.K. Radhakrishnan and; K.L. Sreedevi, Advs. and; Sujith

Advocate for Pet/Ap. : Jaiji Itten and; Pramod Jaiji, Advs.

Judgement :

ORDER

G. Sasidharan, J.

1. Crl. R.P.852/2002 is filed by the accused in C.C.418/1999 on the file of the Additional Chief Judicial Magistrate, Economic Offences, Ernakulam. C.C.418/1999 was taken on file by the Magistrate on the basis of a complaint filed

by the first respondent alleging commission of the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act'). The allegation was that the petitioner issued a cheque for Rs. 20,000/- to the first respondent and it was dishonoured for the reason that there was no sufficient amount in the account maintained by the petitioner in the bank. After dishonour of the cheque, notice was issued to the petitioner demanding payment of the amount covered by the cheque. A complaint was filed by the first respondent alleging commission of the offence punishable under Section 138 of the Act since the petitioner did not pay the amount within 15 days of receipt of notice. After taking evidence, the learned Magistrate found that the petitioner committed the offence under Section 138 of the Act and on convicting him thereunder sentenced him to undergo rigorous imprisonment for three months and to pay compensation of Rs. 20,000/- under Section 357(3) of the Criminal Procedure Code. Petitioner filed CrI. A.216/2000 in the Sessions Court, Ernakulam and that appeal was disposed of by the learned Sessions Judge confirming the order of conviction and directing that the petitioner has to undergo simple imprisonment for three months and to pay compensation of Rs. 20,000/-.

2. CrI. R.P.857/2002 arises out of C.C.592/1999 on the file of the Additional Chief Judicial Magistrate, Economic Offences, Ernakulam and the allegation in the above case was also that the petitioner committed the offence punishable under Section 138 of the Act. In both the above cases which were pending on the file of the Additional Chief Judicial Magistrate the accused was the same person, the petitioner in both these revisions and both the cases were jointly tried and disposed of by the learned Magistrate by a common judgment. The allegation in C.C.592/1999 was that the petitioner issued a cheque for Rs. 40,000/- to the first respondent and when that cheque was presented for encashment it was returned unpaid for the reason that the payment was stopped. Even after issuance of notice demanding payment of the amount, the petitioner did not care to pay the amount and hence the complaint alleging commission of offence punishable under Section 138 of the Act was filed against the petitioner. The learned Magistrate convicted the petitioner under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for six months and to pay compensation of Rs. 40,000/-. CrI. A.217/2000 was filed in the Sessions Court, Ernakulam and the appellate Court

confirmed the conviction and modified the sentence directing that the petitioner has to undergo simple imprisonment for three months and to pay compensation of Rs. 40,000/-.

3. The argument advanced by the learned counsel appearing for the petitioner is that in C.C.418/1999 the order of conviction made by the learned Magistrate is improper for the reason that there is no evidence in the case to show that proper notice as envisaged in Section 138(b) of the Act was given to the petitioner. The first respondent was examined in the case as PW.1. In the chief examination PW.1 says that he got Ext.P3 memo from the bank on 17.6.1996. Ext.P3 is the memo sent from the bank regarding the dishonour of Ext.P1 cheque for Rs. 20,000/-. Ext.P5 is the postal receipt for sending notice. It is seen from Ext.P5 that the notice was sent to the petitioner on 4.7.1996. It is clear from the above evidence available on records that the notice was not sent by the first respondent within 15 days of receipt of information regarding the return of the cheque unpaid. Since the notice has not been sent within the time specified as per the provisions of the Act the finding by the trial Court as well as the appellate Court that the petitioner committed the offence under Section 138 of the Act in C.C.418/1999 is not correct. The order of conviction and sentence of the petitioner in C.C.418/1999 is liable to be set aside for that reason alone.

4. According to the learned counsel appearing for the petitioner, in C.C.592/1999 the complaint was not filed within the time specified in the Act and hence the Magistrate ought not to have taken cognizance of the offence. Ext.P7 is the cheque for Rs. 40,000/- and according to P.W.1, it was dishonoured for the reason that payment was stopped. Ext.P9 is the intimation the first respondent obtained from the bank. P.W.1 says that he got Ext.P9 intimation on 7.8.1996. Notice demanding payment of the amount covered by Ext.P7 cheque was sent by the first respondent. Ext.P11 is the postal acknowledgment produced for proving that the petitioner received the notice. P.W.1 in the chief examination says that the petitioner received the notice on 17.8.1996. On receipt of the notice the petitioner would have paid the amount within 15 days and the period of 15 days expired by 1.9.1996. The complaint would have been filed within one month of the date on which the cause of action arose under Clause (c) of the proviso to Section 138 of

the Act. The submission made by the learned counsel appearing for the petitioner is that the complaint in C.C.592/1999 would have been filed on or before 1.10.1996.

5. In *Saketh India Ltd. v. India Securities Ltd.* (1999 (2) KLT SN 13 P.14 - 1999 (1) KLJ 820 (SC)) it was held that ordinarily in computing the time, the rule observed is to exclude the first day and to include the last day. Applying the said rule, the period of one month for filing complaint has to be reckoned excluding the first day. In the case which came up for consideration before the Supreme Court the 15 days within which payment had to be made expired on 14.10.1995 and cause of action for filing the complaint arose on 15.10.1995. The Supreme Court said that 15.10.1995 had to be excluded for computing the period of one month even though the cause of action arose on 15.10.1995. The Supreme Court held that the complaint filed on 15.11.1995 was within time when the period of one month was reckoned excluding the first day and including the last day. In the decision in *SIL Import, U.S.A. v. Exim Aides Silk Exporters* (1999 (2) KLT 275 (SC)) the Supreme Court on following *Saketh India Ltd.* 's case (*supra*) held that in computing the period of one month for filing the complaint the first day has to be excluded.

6. In this case the period of 15 days expired by 1.9.1996 and cause of action arose on 2.9.1996. In computing the period of one month the first day i.e. 2.9.1996 has to be excluded and the last day, 2.10.1996 has to be included and the period of one month expired by 2.10.1996, The submission made by the learned counsel appearing for the petitioner is that since 2.10.1996 was a holiday the complaint would have been filed on 1.10.1996. The complaint was filed only on 3.10.1996 and according to the petitioner, the complaint was filed after one month of arising the cause of action. On the other hand, the submission made by the learned counsel appealing for the first respondent is that Section 10 of the General Clauses Act applies in this case and hence 2.10.1996 being a holiday the first respondent had time till 3.10.1996 for filing the complaint,

7. Section 10 of the General Clauses Act says that where, by any Central Act or Regulation made after the commencement of the Act, any Act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or

within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the Actor proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open. According to the petitioner, Section 10 of the General Clauses Act is not applicable in this case for the reason that the Negotiable Instruments Act came into force before the commencement of the General Clauses Act. What is said in Section 10 is regarding computation of time regarding the prescribed period provided in any Central Act or Regulation made after the commencement of the General Clauses Act. It is true that Section 10 as such applies to the cases in which period for doing something in Court is prescribed by any Central Act or Regulation made after the commencement of the General Clauses Act. But that provision does not say that the principle accepted in Section 10 cannot be made applicable when period is prescribed by any Central Act or Regulation made before the commencement of the Act. When an Act prescribes a period for doing something in a Court and the last day falls on a holiday, he is prevented from doing that for the reason that the last day happens to be a holiday. Then the general principle is that when a party is prevented from doing an Act for the reason that the Court is not working on that day he has to be allowed to do that at the first subsequent opportunity. The principle underlying Section 10 of the General Clauses Act is that when a person is prevented from doing an Act for the reason that a day happens to be a holiday he has to be allowed to do that on the next working day. Even in the absence of such a provision in the General Clauses Act, the just and proper thing a Court can do in such cases is to follow the general principle which got acceptance by including Section 10 in the General Clauses Act. The principles embodied in Section 10 of the General Clauses Act can be made applicable in cases in which period is prescribed by any Central Act or Regulation made before the commencement of the General Clauses Act.

8. In *Union of India v. Asharfi Devi and Ors.* (AIR 1957 MP 114) the High Court of Madhya Pradesh held that the principle stated in Section 10 of the General Clauses Act can be made applicable to cases in which period is prescribed by an Act which came into force prior to the commencement of the General Clauses Act. In that case the question which arose for consideration was whether in computing the period within which notice had to be given to the Railway Administration under

Clause(c) of Section 140 of the Railways Act, Section 10 of the General Clauses Act could be made applicable. There the last day for sending notice expired on 24th January and the notice could not be posted on 24th January which was Sunday and also on 25th January as it was a public holiday. The Indian Railways Act is of the year 1890 which came into force prior to the commencement of the General Clauses Act, 1897. The General Clauses Act 1 of 1887 contained a similar provision in Section 7. The High Court of Madhya Pradesh held that there was no reason to hold that the plaintiff in that suit cannot take advantage of Section 10 of the General Clauses Act.

9. In *Mahadeo Ganpati Patil v. Nabha Vishwanath* (AIR 1929 Nag. 96) the High Court of Nagpur considered the question whether Section 10 of the General Clauses Act is applicable in computing the period mentioned in the Cattle Trespass Act. Cattle Trespass Act came into force in 1871 i.e. before the commencement of the General Clauses Act. Section 20 of the Cattle Trespass Act provided for filing complaint within a period of 10 days. The period of 10 days expired on a Sunday. In that case the Court said that even though Section 10 of the General Clauses Act only applies to Acts made on or after 14th January, 1897, and does not cover/in terms, an Act like the Cattle Trespass Act which was passed in 1871, every consideration of justice and expediency would require that the accepted principle, which underlies Section 10 General Clauses Act, should be applied in that case. Even though the period within which complaint had to be filed expired on 11th December, a Sunday, the complaint filed on 12th December, the next working day was found to be within time.

10. Here in C.C.592/1999 the last day for filing the complaint was 2.10.1996, a holiday. The complaint was filed on 3.10.1996. Applying the general principle that when a person is prevented from doing anything in Court on a particular day for the reason that the day happens to be a holiday he can do that on the next working day, the filing of the complaint on the next working day i.e. 3.10.1996 was within time. There is no reason for saying that the order of conviction and sentence in C.C.592/1999 which was modified by the appellate Court is in any way illegal or improper.

Crl. R.P.852/2002 is allowed on setting aside the order of conviction and sentence in C.C.418/1999. Crl. R.P.857/2002 is dismissed.

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