

Satyavan Chaplot Vs. Rajendra

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SooperKanoon Citation : sooperkanoon.com/760013

Court : Rajasthan

Decided On : Dec-16-1997

Reported in : 1998(2)ALD(Cri)868; 1998CriLJ2309; 1998(2)WLC190;
1998(1)WLN474

Judge : A.K. Singh, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138, 138B and 142; Code of Criminal Procedure (CrPC) - Sections 200 and 482

Appeal No. : Cri. Misc. Petn. No. 307 of 1997

Appellant : Satyavan Chaplot

Respondent : Rajendra

Advocate for Def. : G.R. Kalla, Adv.

Advocate for Pet/Ap. : None

Disposition : Petition dismissed

Judgement :

ORDER

A.K. Singh, J.

1. Heard and perused the record.

2. This petition under Section 482 Cr.P.C. is directed against the order dated 17-2-97 passed by the learned Addl. Chief Judicial Magistrate No. 1, Udaipur in complaint case No. 76/96. By the aforesaid order, the learned Addl. Chief Judicial Magistrate held that the notice served by the non-petitioner under Section 138(b) of [Negotiable Instruments Act, 1881](#), is not invalid and he rejected the petitioner's prayer for dropping the proceedings instituted against him.

3. The facts of the case so far as they are necessary for the disposal of this petition may be summarised below.

4. Non-petitioner Rajendra filed a complaint in the Court of Addl. Chief Judicial Magistrate No. 1, Udaipur on 24-6-95. According to the averments made in the complaint, the non-petitioner-complainant carries on the business in Udaipur and deals with automotive and industrial lubricants and petroleum articles. It is alleged that the accused-petitioner purchased certain articles from the non-petitioner-complainant, the particulars of which are given in para No. 2 of the complaint. Three cheques were issued by the accused-petitioner. The first cheque was issued on 25th November, 1994. The second was issued on 5th April, 1995 and the third cheque was issued on 10th April, 1995. The amount of the first two cheques was duly paid by the bank but the amount of the third cheque dated 10th April, 1995 was not paid by the bank on the ground that the accused did not get sufficient amount in his bank account. The Bank of Baroda, Udaipur dishonoured the above mentioned cheque on 6th May, 1995. The non-petitioner complainant sent a notice to the accused petitioner on 16th May, 1995. The notice was served on 18th May, 1995. The amount of the cheque was not paid in spite of the service of the notice. Therefore, the non-petitioner complainant filed a complaint alleging commission of the offence punishable under Section 138 of the [Negotiable Instruments Act, 1881](#).

5. After conducting an inquiry under Section 200 of the Code of Criminal Procedure the learned Addl. Chief Judicial Magistrate No. 1 issued process against the accused petitioner. On 6th Jan., 1997, the accused petitioner moved an application praying that the proceedings against him should be dropped because the notice served upon him was bad in the eye of law. In this application, it was not pointed out as to what was the defect with which the notice was

suffering. It was argued before the learned Addl. Chief Judicial Magistrate that in the notice served on the accused, 15 days' time should have been given to him to make the payment and since in place of 15 days only seven days' time was given to him, therefore, the notice was bad in law. The arguments advanced by the accused petitioner do not find favour with the learned Addl. Chief Judicial Magistrate No. 1. He, therefore, rejected the application in which prayer for dropping the proceedings was made.

6. Clause (b) of the proviso given to Section 138 of the Negotiable Instruments Act requires that the payee or the holder in due course of the cheque, as the case may be, should make a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within 15 days of the receipt of the information by him from the Bank regarding the return of the cheque as unpaid and Clause (c) of the proviso provides that 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 15 days of the receipt of the said notice, the liability under Section 138 of the Negotiable Instruments Act would arise. A bare perusal of the proviso given in Section 138 of the Negotiable Instruments Act shows that the notice, which is required to be served by the payee or the holder in due course of the cheque, is not required by law to contain a statement to the effect that the amount should be paid within any period of time. Therefore, if the sender of the notice has mentioned any period in his notice within which the amount is to be paid, such mention of the period within which the amount is to be paid would be unnecessary in view of the proviso given to Section 138 of the Act.

In *V.N. Samant v. K.G.N. Traders*, 1994 (3) Crimes 725 : 1994 Cri LJ 3115 at page 729, the learned single Judge observed (at page 3120; of Cri. LJ) :-

Another contention that was urged by the learned counsel for the petitioner was that under Section 138, notice giving 15 days' time for payment ought to have been issued and that as in this case the complainant had issued a notice demanding the amount within a week, the notice is invalid and, consequently no offence under Section 138 is made out. He relied on the judgment of Punjab and

Haryana High Court in *Embee Textiles Ltd. v. Saridhu Ram and Co.* He has only produced the gist of the judgment. In the head note, it is stated that under Section 138, notice of demand should give 15 days to pay, whereas in the notice under reference 30 days' time had been given and that as such, it was not a proper notice and that the notice did not conform to the specifications of the statute. The facts of that case and the actual reasoning given are not available. However, if that decision purports to lay down that the notice should give 15 days time for payment and that if the time given is either less or more, the notice would be invalid. Irrespectfully disagree with that view.

After considering the provisions of Section 138 of the Negotiable Instruments Act, the learned single Judge observed :-

A plain reading of the above proviso would indicate that all that the statute requires is that the payee or the holder in due course of the cheque should make a demand for the payment of the amount covered by the cheque by giving a notice, in writing to the drawer of the cheque and that such notice should be issued within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. Clause (b) of the proviso does not stipulate that the payee or the holder in due course who issues the notice should give any specific time for by the drawer to pay the amount. The Sub-clause (c) of the proviso only stipulates that if the drawer of the cheque fails to make the payment of the amount to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice, then the offence would be committed. The cause of action for filing the complaint would arise after the completion of 15 days from the date the drawer receives the notice and fails to pay the amount within that period. The payee cannot lodge a complaint after the completion of one month from the date the cause of action arise as there is a bar under Section 142(b). To comply with Clause (b) of the proviso to Section 138, it is not at all necessary for the payee to specify any time in the notice for making payment even if he specifies a time lesser than 15 days, the statute gives the payee time of 15 days for making payment and if he pays that amount within 15 days of the receipt of the notice, the offence would not be committed. For the purpose of this case, it is not necessary to consider the question as to what would be the consequence if the payee

voluntarily gives more than 15 days for payment while issuing the notice. In the case referred to above the notice had given 30 days' time for payment and possibly that may be the reason why that notice was held invalid. But in the present case, the fact that the notice gives 7 days time for payment does not render it invalid.

7. Above observations support the conclusion arrived at by me that if a period of less than 15 days is mentioned in the notice as the period within which the payment of the amount of cheque is to be made, the notice could not be invalid because the proviso given below under Section 138 of the Act does not require the payee or the holder of the cheque to mention any period in the notice. Having regard to the provisions contained in Section 138 of the Act, I am of the opinion that the principle that the proceedings are vitiated for non-compliance of the statutory provision is not applicable to the notice issued under Clause (b) of the proviso given below Section 138 of the Negotiable Instruments Act because there is no violation of law if any particular period within which payment is to be made is mentioned in the notice and such period is other than the less or more than 15 days. Besides, no prejudice has been caused to the accused petitioner by giving him a notice by which he was required to make the payment of the amount of cheque within a period of seven days. Therefore, the proceedings cannot be dropped nor they can be said to have been vitiated on account of causing any prejudice to the accused-petitioner. !

8. For the reasons mentioned above, this petition has no force and deserves to be dismissed and is hereby dismissed.