**Prabhakaran Vs. Natesan**

**Prabhakaran Vs. Natesan**

**SooperKanoon Citation** : sooperkanoon.com/794432

**Court** : Chennai

**Decided On :** Jun-30-1998

**Reported in** : 1998(2)CTC396

**Judge** : M. Karpagavinayagam, J.

**Acts** : Negotiable Instruments Act, 1881 -- Sections 138

**Appeal No.** : Crl. R.C. No. 661 of 1995

**Appellant** : Prabhakaran

**Respondent** : Natesan

**Advocate for Def.** : Mr. C.S.S. Pillai, Adv.

**Advocate for Pet/Ap.** : Mr. V. Gopinath, Senior Counsel for;Mr. K. Selvarangam, Adv.

**Disposition** : revision is dismissed

**Judgement** :
ORDER

1. Mr. Prabhakaran, the petitioner herein, has filed this revision challenging the judgment in C.A. No.80 of 1993 on the file of learned Sessions Judge, Kanyakumari District at Nagercoil, confirming the conviction for the offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act')

imposed upon him in C.C. No.172 of 1991 on the file of Judicial Magistrate No.1, Kuzhithurai.

2. The case of the prosecution is this:- The petitioner/accused borrowed a sum of Rs.25,000 from the complainant on 5.1.1991 and issued a postdated bearer cheque (cash cheque) with the date 5.8.1991 drawn on Union Bank of India, Marthandam Branch for the said amount. Later, when the cheque was presented for encashment by the complainant on 5.8.1991, it was returned with an endorsement 'not arranged for'. Thereupon, on 16.8.1991 the complainant sent a statutory notice to the petitioner demanding the cheque amount. The petitioner sent a reply dated 30.8.1991 denying the issue of the cheque and loan. Hence, the respondent herein filed a private complaint before the trial Court on 24.9.1991.

3. On behalf of the prosecution, the respondent examined himself as P.W.1 and also examined two other witnesses. Exs.P1 to P7 were examined onthe side of the prosecution. On the side of the accused, the petitioner, D.W.1 and D.W.2 were examined and Exs.Dl to D5 were marked.

4. After trial, the lower Court convicted the petitioner by the judgment dated 14.10.1993 for the offence under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000, in default to undergo R.I. for three months. This was challenged before the appellate Court, which confirmed the judgment of the lower Court. Hence, the revision.

5. Mr. Gopinath, the learned senior counsel appearing for the petitioner, would contend that though the prosecution has not established the ingredients of the offence under Section 138 of the Act and there is no material to show that the complainant is the drawee, as the cheque was a cash cheque, the lower Court wrongly concluded that the petitioner is guilty of the offence under Section 138 of the Act. He would also point out various discrepancies in the evidence of P.Ws.l and 2. By reading out some of the portions of defence witnesses, it is submitted that the evidence of P.Ws.l and 2 cannot be accepted.

6. In reply to the above submissions, Mr.C.S.S. Pillai, the counsel for the respondent/complainant resisted the said argument in support of the impugned

judgments.

7. I have gone through the records and carefully considered the submissions made on either side.

8. The main thrust of the argument of the counsel for the petitioner is that the complainant cannot be said to be the drawee, as the cheque happened to be the cash cheque. This submission, in my view, does not have any substance.

9. Under Section 138 of the Negotiable Instruments Act, where any cheque drawn by a person on an account maintained by him for payment of any money to another person from out of that account for the discharge of any debt is returned by the bank as not arranged for, such person shall be deemed to have committed the offence. As per the proviso to Section 138, the offence is complete only when the demand made by the payee or the holder in due course of the cheque for the payment of the cheque amount through notice was not met by the drawer of the cheque within the time prescribed. Thus, it is clear that the payee or the holder in due course of the cheque can maintain the complaint. The meaning of the 'holder in due course' as provided in Section 9 is, any person who for consideration became the possessor of the cheque, if payable to bearer. This also would make it clear that the bearer of the cheque becomes the holder in due course. Sections 118 and 139 of the Act also would reveal that the holder of a cheque is the holder in due course. Therefore, the complainant in this case becomes the holder in due course as he is considered to be the bearer of the cheque as spelt out by P.W.3, the Bank Manager.

10. P.W.1 would say that in order to discharge the loan of Rs.25,000 obtained by the petitioner from P.W.1 , the petitioner issued a cash cheque toP.W.1 by putting his signature both in front and back side of the cheque. Therefore, once the complainant received the cheque from the petitioner, the complainant becomes the bearer of the cheque and holder of the cheque. In fact, P.W.3, the Bank Manager would specifically state that P.W.1 is the bearer of the cheque and he presented the cheque issued by the petitioner and that since there was no sufficient amount available in the account of the petitioner, the cheque was returned as 'not arranged for'. The records would show that P.W.3 has not at all

been cross-examined. Therefore, once the complainant becomes the bearer and he presented the cheque for encashment, virtually the complainant becomes the holder in due course and as such, it could very well be said that he is competent to file a complaint on the non-payment of the cheque amount after dishonour of the cheque.

11. As regards the variations of the evidence of P.Ws.l and 2, I would rather say that the evidence of P.Ws.l and 2, as pointed out by both the courts below, is cogent and acceptable. In fact, P.W.1 would admit that he has already given a complaint to the Kerala Police and the same was enquired into. No doubt, it is true that P.W.2 would say that he did not give any complaint to the Kerala Police nor was he enquired. But, D.W.1 would say that one Jalaludeen (P.W.2) gave a complaint to Kerala Police and the same was referred. However, it is not established by D.W.I that the said Jalaludeen is P.W.2. Moreover, D.W.2, Circle Writer, would state that P.W.1 Natesa Panicker gave a complaint against the petitioner on 8.8.1992 with reference to some cheque and the said case was referred as of civil nature. Therefore, in a way the evidence of P.W.1 is sufficiently corroborated by the evidence of D.W.2.

12. Ex.D3, the complaint given by P.W.1 to Kerala Police would also show that he complained that the cheque issued by the petitioner on 5.1.1991 with dated 5.8.1991 was dishonoured and thereby he was cheated. So, the contents of the said complaint also are the same in the private complaint. Though there is a change of address given by the complainant, that would not affect the credibility of P.W.1 who has been believed by both the Courts below.

13. There is yet another aspect. In reply to the statutory notice, the petitioner denied the issue of cheque and loan. When P.W.3, the Bank Manager in his examination stated that the signature found in the cheque was found to be the signature of the petitioner, the petitioner did not choose to cross-examine P.W.3. So, there is no material whatsoever to hold that the cheque was not issued by the petitioner.

14. In view of what is stated above, I do not find any reason to interfere with the findings of the Courts below.

15. In the result, the revision is dismissed.