

Chakra Textile and anr. Vs. Jeevan Enterprises

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Court : Chennai

Decided On : Jun-17-1999

Reported in : [2001]103CompCas807(Mad)

Judge : A. Ramamurthi, J.

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

Appeal No. : Crl. O.P. No. 10108 of 1999 and Crl. M.P. Nos. 3977 and 3978 of 1999

Appellant : Chakra Textile and anr.

Respondent : Jeevan Enterprises

Advocate for Pet/Ap. : K. Sukumaran, Adv.

Disposition : Petition allowed

Judgement :

A. Ramamurthi, J.

1. Petition filed under Section 482 of Criminal Procedure Code to call for the records relating to C. C. No. 998 of 1996 on the file of the Judicial Magistrate No. II, Karur and quash the proceedings.

2. The case in brief is as follows :

The respondent filed a complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'NI Act') against petitioners/ accused Nos. 1 and 2 and the same is pending' in C. C. No. 998 of 1996 on the file of the Judicial Magistrate No. II, Karur. The case relates to dishonour of the cheque bearing No. 133310, dated Octobers, 1995, for a sum of Rs. 35,000 drawn on Lakshmi Vilas Bank, Karur. The complaint was filed on May 14, 1996. The cheque was originally presented for encashment at the Bank of Baroda, Karur branch and the same was returned on December 11, 1995, with an endorsement 'Insufficient Funds'. The respondent issued a notice on December 20, 1995 through Mr. Ponnusamy, advocate, and the same was received by the petitioners. The respondent has got cause of action to file a complaint, but he did not prefer any complaint within the period stipulated and as such forfeited the right to file a complaint. There can be only one cause of action. The respondent again presented the cheque and the same was returned with an endorsement 'Exceeds Arrangement'. The respondent issued another notice dated April 9, 1996 and thereafter only filed the present complaint. The respondent had deliberately suppressed the fact of issue of the notice on December 20, 1995 and the subsequent failure on the part of the respondent to file the complaint within one month. Now, the respondent again filed the complaint on the basis of fresh presentation on March 29, 1996, and the subsequent dishonour. The complaint is liable to be quashed.

3. Heard learned counsel for the petitioner.

4. Learned counsel for the petitioner stated that the cheque in question was presented for encashment in the first instance and the same was returned on December 11, 1995. The respondent issued a notice under Section 138 of the Negotiable Instruments Act on December 20, 1995, but however, he did not file the complaint within one month from the date of the expiry of 15 days. By this the respondent has forfeited the right to prosecute the petitioners under Section 142 of the Negotiable Instruments Act. Again the respondent presented the cheque on March 29, 1996, and as the same was dishonoured, another notice was issued on April 9, 1996, and later only filed this complaint. Having failed to prosecute on the basis of the first cause of action, which arose on the basis of the notice dated December 20, 1995, the respondent cannot now file the complaint on the basis of

the second dishonour and also on the basis of the notice dated April 9, 1996. There is some force in this contention.

5. Learned counsel for the petitioner also relied upon the judgment in *Sadanandan Bhudran v. Madhavan Sunil Kumar* : 1998 CriLJ4066 , wherein it is observed that Clause (a) of the proviso to Section 138 does not put any embargo upon the payee to successively present a dishonoured cheque during the period of its validity. This apart, in the course of business transaction it is not uncommon for a cheque being returned due to insufficient funds or similar such reasons and being presented again by the payee after some time, on his own volition or at the request of the drawer, in expectation that it would be encashed. The primary interest of the payee is to get his money and not prosecution of the drawer, recourse to which, normally, is taken out of compulsion and not choice. On each presentation of the cheque and its dishonour, a fresh right and not cause of action--accrues in his favour. He may, therefore, without taking per-emptory action in exercise of his such right under Clause (b) of Section 138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But once he gives a notice under Clause (b) of Section 138, he forfeits such right for in the 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. Dishonour of the cheque on each re-presentation does not give rise to a fresh cause of action. The complaint under Section 142(b) has to be filed within one month from the day immediately following the day on which the period of 15 days from the date of receipt of the first notice by the drawer expires. This decision is applicable to the case on hand. Since the complainant failed to file any complaint based upon the first cause of action, the present complaint is clearly barred by time and as such the proceedings are liable to be quashed.

6. For the reasons stated above, the petition is allowed and the proceedings in C. C. No. 998 of 1996 pending on the file of the Judicial Magistrate No. II, Karur are quashed. Consequently, CrI. M. P. Nos. 3977 and 3978 of 1999 are closed.