

R. Subramanian Vs. K. Devarajan

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Court : Chennai

Decided On : Oct-17-2006

Reported in : IV(2007)BC36

Judge : R. Regupathi, J.

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

Appeal No. : Crl. O.P. No. 593 of 2002

Appellant : R. Subramanian

Respondent : K. Devarajan

Advocate for Def. : None

Advocate for Pet/Ap. : P. Mani, Adv.

Judgement :

ORDER

R. Regupathi, J.

1. The petitioner is an accused for in offence punishable under Section 138 of the Negotiable Instruments Act.
2. It is alleged in the complaint at paragraph 6 that a statutory notice dated 7.11.1995 was issued and the accused refused to receive the same and requested

the complainant to represent and encash the amount. Subsequently, the complainant alleged to have deposited the same cheque on 20.1.1996 and again it was dishonoured. A second notice was issued on 3.2.1996 and as the petitioner/accused refused to receive the same, it was returned on 13.2.1996.

3. Learned Counsel for the petitioner submits that once a statutory notice is issued on the dishonour of the cheque, the cause of action arises and, subsequently, the complainant may have to approach the Court for the relief. But in the instant case, after the expiry of the stipulated period of the first notice, the complaint has not been initiated, but a second notice has been issued.

4. Learned Counsel for the petitioner relied on a case in *Sadanandan Bhadran v. Madhavan Sunil Kumar I* (1999) BC 691 (SC) : 111 (1998) CCR 238 (SC) : 1998(3) Crimes 217 (SC), wherein it has been held as follows:

Besides the language of Sections 138 and 142 which clearly postulates only one cause of action there are other formidable impediments which negates the concept of successive causes of action. One of them is that for dishonour of one cheque there can be only one offence and such offence is committed by the drawer immediately on his failure to make the payment within fifteen days of the receipt of the notice served in accordance with Clause (b) of the Proviso to Section 138. That necessarily means that for similar failure after service of fresh notice on subsequent dishonour the drawer cannot be liable for any offence nor can the first offence be treated as non est so as to give the payee a right to file a complaint treating the second offence as the first one. At that stage it will not be a question of waiver of the right of the payee to prosecute the drawer but of absolution of the drawer of an offence, which stands already committed by him and which cannot be committed by him again. The other impediment to the acceptance of the concept of successive causes of action is that it will make the period of limitation under Clause (c) of Section 142 otiose, for, a payee who failed to file his complaint within one month and thereby forfeited his right to prosecute the drawer, can circumvent the above limitative clause by filing a complaint on the basis of a fresh presentation of the cheque and its dishonour. Since in the interpretation of statutes the Court always presumes that the Legislature inserted every part thereof for a

purpose and the legislative intention is that the every part should have effect the above conclusion cannot be drawn for, that will make the provision for limiting the period of making the complaint nugatory. Now, the question is how the apparently conflicting provisions of the Act, one enabling the payee to repeatedly present the cheque and the other giving him only one opportunity to file a complaint for its dishonour, and that too within one month from the date the cause of action arises, can be reconciled. Having given our anxious consideration to this question, we are of the opinion that the above two provisions can be harmonised, with the interpretation that 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 pre-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 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. Needless to say, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of receipt of the notice by the drawer, expires.

5. Though service has been effected on the respondent, at the time when the matter was called, he remained absent.

6. I have perused the materials available on record.

7. Admittedly, on the strength of the second notice, the private complaint has been initialed. When once the statutory notice is issued, at the first instance itself cause of action arises and the complainant should have initiated the complaint. The principle laid down by the Supreme Court is equally applicable to the case on hand. Therefore, in such circumstances, the proceedings pending before the learned Judicial Magistrate in C.C. No. 237 of 1996 deserves to be set aside and is accordingly set aside. The petition is ordered accordingly.