A SADANANDAN BHADRAN

v.

MADHAVAN SUNIL KUMAR

AUGUST 28, 1998

B [M.K. MUKHERJEE AND D.P. WADHWA, JJ.]

Criminal Law :

Negotiable Instruments Act, 1881 : Sections 138 and 142.

C

Cheque—Dishonour of—Non-payment—Filing of complaint—Cause of action—Arising of—Held : Cause of action arises only once—A fresh cause of action would not arise on each presentation of cheque and its dishonour—A cheque can be presented any number of times during its period of validity—But once notice is issued and payment not received within 15 days

D *of the receipt of the notice, payee has to avail that very cause of action and file complaint—Compliant has to be filed under S. 142(b) within one month immediately following the day on which the period of 15 days from the date of receipt of the first notice by the drawer expires.*

E *Words and Phrases :*

"Cause of action"—Meaning of—In the context of S. 142(b) of the Negotiable Instruments Act, 1881.

The Respondent handed over a cheque to the appellant in liquidation

F **of the appellant's loan. The cheque was dishonoured for want of sufficient funds. The appellant then sent a lawyer's notice to the respondent calling upon him to pay the amount. The respondent requested more time to pay the amount. Therefore, the appellants did not proceed further. As the respondent did not keep up his promise the appellant presented the cheque once again. This time also the cheque was dishonoured for want of suffi-**

G **cient funds. The appellant sent another notice to the respondent demanding the payment, but the respondent failed to make the payment. The appellant then filed a complaint against the respondent under Section 138 of the Negotiable Instruments Act, 1881. After entering appearance at the trial the respondent contended that the complaint was not maintainable,**

H **as there could not be more than one cause of action in respect of a single**

cheque. The Magistrate accepted this contention and the respondent was acquitted. The High Court upheld the order of the Magistrate. Hence this appeal.

Dismissing the appeal, the Court

HELD : 1. Clause (a) of the proviso to Section 138 of the Negotiable Instruments Act, 1881 does not put any embargo upon the payee to successively present a dishonoured cheque during the period of its validity. This apart, in 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 sometime, 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. For the above reasons it must be held that a cheque can be presented any number of times during the period of its validity. 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 Section 138(b) of the Act, 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 Section 138(b) 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. 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.

[183-G-H; 184-A; 186-E-G]

2.1. In a generic and wide sense (as in Section 20 of the Code of Civil Procedure, 1908) 'cause of action' means every facts which it is necessary to establish to support a right or obtain a judgment. Viewed in that context the following facts are required to be proved to successfully prosecute the drawer for an offence under Section 138 of the Act :

(a) that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured;

(b) that the cheque was presented within the prescribed period;

A **(c) that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and**

(d) that the drawer failed to make the payment within 15 days of the receipt of the notice. [184-H; 185-A-C]

B **2.2. Proceeding on the basis of the generic meaning of the term 'cause of action' certainly each of the above facts would constitute a part of the cause of action but then it is significant to note that Section 142(b) gives it a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and that is the failure to make the payment within 15 days from the date of the receipt of the notice. The combined** C **reading of the above two Sections of the Act leaves no room for doubt that cause of action within the meaning of Section 142(c) arises - and can arise - only once. [185-D-E]**

SKDL Fireworks Industries v. *K.V. Sivarama Krishnan,* **(1995) Cr.L.J.** D **1384 (Ker) (FB), approved.**

Kumaresan v. *Ameerappa,* **(1991) 1 KLT 893 (Ker), overruled.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 589 of 1992.

E

From the Judgment and Order dated 6.2.92 of the Kerala High Court in Crl. M.C. No. 1373 of 1991.

C.N. Sreekumar for G. Prakash for the appellant.

F T.S. Arunachalam and Shiv Kumar Suri (A.C.) for the Respondent.

The Judgment of the Court was delivered by

M.K. MUKHERJEE, J. This appeal is directed against the judgment and order dated February 26, 1992 rendered by a learned Single Judge of G the Kerala High Court in Criminal Misc. Case No. 1373 of 1991. Facts relevant for disposal of this appeal are as under.

On January 4, 1991, the respondent handed over a cheque for Rs. 30,000 to the appellant in liquidation of the loan he obtained from the latter. The cheque was presented in the bank for encashment on January H 5, 1991 but was returned for want of sufficient funds in the account of the

respondent. The appellant then sent a lawyer's notice to the respondent on January 15, 1991 calling upon him to pay the aforesaid amount. On receipt of the notice the respondent approached the appellant and requested for some time to pay the amount. In view of the assurance so given the appellant did not initiate any further proceeding but as the respondent did not keep his promise he presented the cheque in the bank once again on May 4, 1991. This time also the cheque was dishonoured for want of sufficient funds. Another notice dated May 9, 1991 was then served upon the respondent demanding payment of the amount but he failed to make the payment. The appellant then filed a complaint against the respondent on June 30, 1991 under Section 138 of the Negotiable Instruments Act, 1881 ('Act' for short). On that complaint cognizance was taken and the respondent was summoned to face the trial. After entering appearance the respondent filed an application stating that in view of the Division Bench judgment of the Kerala High Court in *Kumaresan* v. *Ameerappa* (1991) 1 K.L.T. 893, (since over-ruled by a Full Bench of that Court in *M/s S.K.D.L. Fireworks Industries* v. *K.V. Sivarama Krishnan*, (1995) Crl.L.J. 1384) wherein it was held that there could not be more than one cause of action in respect of a single cheque, the complaint was not maintainable. The trying magistrate accepted the contention of the respondent and acquitted him. Against the order of acquittal the appellant moved the High Court but relying upon the judgment in *Kumaresan's* case (supra), it upheld the order of the Magistrate.

In the context of the above facts the question that requires to be answered in this appeal is whether the payee or holder (hereinafter referred to as 'payee' for the sake of brevity) of a cheque can initiate prosecution for an offence under Section 138 of the Act for its dishonour for the second time, if he had not initiated such prosecution on the earlier cause of action. The above question came up for consideration before different High Courts in several cases, besides those of *Kumaresan and Fireworks Industries* (supra); and culling the judgments rendered therein we find that the following three different propositions have been laid down by one or the other High Court:

(i) a cheque can be presented for encashment on any number of occasions within the period of its validity and it dishonour on every occasion will give rise to a fresh cause of action' within the meaning of clause (b) of Section 142 of the Act so as to

A entitle the payee to institute prosecution under section 138 on the basis of the last cause of action;

(ii) a cheque can be presented for encashment on any number of occasions within the period of its validity but there can be only one cause of action under Section 142(b) arising from its last dishonour; and

B

(iii) only for the first dishonour - and not subsequent dishonours - can a prosecution under section 138 be instituted as Section 138 read with Section 142(b) envisages only one cause of action in respect of one and the same cheque.

C

To ascertain which, if any, of the above propositions dovetails into the Scheme of the Act it will be necessary at this stage to refer to its relevant provisions.

D Chapter XVII of the Act containing the fascicule of Sections 138 to 142 was brought into the statute book with effect from April 1, 1989 by Section 4 of the Banking Public Financial Institutions and Negotiable Instruments laws (Amendment) Act, 1988. The 'objects and reasons' clause of the Bill which introduced the Amending Act indicates that the new chapter was incorporated to enhance the acceptability of cheques in set-
E tlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason that it exceeds the arrangements made by the drawer with adequate safeguards to prevent harassment of honest drawers. Section 138 of the Act reads as under:

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"Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount

G of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of

H this Act, be punished with imprisonment for a term which

may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both: A

Provided that nothing contained in this section shall apply unless -

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier; B

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and C

(c) 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 fifteen days of the receipt of the said notice." D

On a careful analysis of the above Section it is seen that its main part creates an offence when a cheque is returned by the bank unpaid for any of the reasons mentioned therein. The significant fact, however, is that the proviso lays down three conditions precedent to the applicability of the above Section and, for that matter, creation of such offence and the conditions are: (i) the cheque should have been presented to the bank within six months of its issue or within the period of its validity whichever is earlier; (ii) payee should have made a demand for payment by registered notice after the cheque is returned unpaid; and (iii) that the drawer should have failed to pay the amount within 15 days of the receipt of notice. It is only when all the above three conditions are satisfied that a prosecution can be launched for the offence under section 138. So far as the first condition is concerned 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 course of business transactions 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 sometime, on his own volition or at the request of the drawer, E F G H

A in expectation that it would be encashed. Needless to say, 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. For the above reasons it must be held that a cheque can be presented any number of times during the period of its validity. Indeed that is also the consistent view of all the High Courts except that of the Division Bench of
B the Kerala High Court in *Kumaresan* (supra) which struck a discordant note with the observation that for the first dishonour of the cheque only a prosecution can be launched for there cannot be more than one cause of action for prosecution.

C The next question that falls for our determination is whether dishonour of the cheque on each occasion of its presentation gives rise to a fresh cause of action within the meaning of Section 142(b) of the Act. Section 142 reads as under:

> "Notwithstanding anything contained in the Code of Criminal Pro-
> D cedure, 1973
>
> (a) no court shall take congnizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;
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> E
>
> (b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138;
>
> F (c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138."

From a plain reading of the above Section it is manifest that a competent Court can take cognizance of a written complaint of an offence under
G section 138 if it is made within one month of the date on which *the cause of action arises under clause (c) of the proviso to Section 138.* (emphasis supplied)

In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) 'cause of action' means every fact which it is necessary to
H establish to support a right or obtain a judgment. Viewed in that context,

the following facts are required to be proved to successfully prosecute the drawer for an offence under Section 138 of the Act:

(a) that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured;

(b) that the cheque was presented within the prescribed period;

(c) that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and

(d) that the drawer failed to make the payment within 15 days of the receipt of the notice.

If we were to proceed on the basis of the generic meaning of the term 'cause of action' certainly each of the above facts would constitute a part of the cause of action but then it is significant to note that clause (b) of Section 142 gives it a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and that is the failure to make the payment within 15 days from the date of the receipt of the notice. The reason behind giving such a restrictive meaning is not far to seek. Consequent upon the failure of the drawer to pay the money within the period of 15 days as envisaged under clause (c) of the proviso to Section 138, the liability of the drawer for being prosecuted for the offence he has committed arises, and the period of one month for filing the complaint under section 142 is to be reckoned accordingly. The combined reading of the above two sections of the Act leaves no room for doubt that cause of action within the meaning of Section 142(c) arises - and can arise - only once.

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

A 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 B (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 C 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.

D 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 E 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 F 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 G of the receipt of the notice by the drawer, expires.

For the foregoing discussion this appeal stands dismissed as the appellant had earlier taken recourse to clause (b) of Section 138 of the Act but did not avail of the cause of action that arose in his favour under H Section 142(b) of the Act.

Before parting with this judgment we must place on record our deep appreciation for the invaluable assistance rendered by Mr. T.S. Arunachalam, senior counsel and Mr. Shiv Kumar Suri, who appeared as *amicus curiae*, (the respondent did not appear in spite of service of notice) in deciding the short but interesting question raised in this appeal. A

V.S.S. Appeal dismissed. B