

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl.M.C. 2920/2004**

% Date of decision: 29.07.2009

M/s. MRIUTHYUNJAYA AGRICULTURE STORE & ORS.
...PETITIONERS
Through: Mr. Mridul Chakravorty, adv.

Versus

M/s. KAVERY DISTRIBUTORS PVT. LTD. ...RESPONDENT
Through: Mr. Vikramajeet Banerjee, Mr. Manish Singhvi, advs.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

: **MOOL CHAND GARG, J.(oral)**

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1. In this case the respondent served a notice under Section 138 of the Negotiable Instruments Act dated 27.12.2003 regarding dishonour of two cheques bearing No. 146366 and 146367 for Rs.3,26,046/- and Rs.5,00,000/- respectively both dated 20.09.2003 drawn on State Bank of India, Saavanpur towards partial discharge of the debt by the petitioners to it which it is submitted were in discharge of their liability but both the cheques were dishonored when presented for encashment with the remarks "payment stopped". The notice issued by the respondent reads as under:

“Sub: Notice under Section 138 of Negotiable Instruments Act read with Section 420 of Indian Penal Code.

On the instructions of my client M/s Kavery Distributors Private Limited, having its office at 309, Inderjit Singh Palace, Delhi Gate Bazar, New Delhi-110002, through its office Mr. Anil Gupta, who has placed all the relevant documents and record before me, I hereby serve upon you the following legal notice.

1. That my client above named have been supplying inter alia Di-Ammonium Phosphate (DAP in short) to you from time to time. The payments were always made on account which has been duly adjusted by our client against their outstanding bills.
2. That in Course of this business transaction you have issued cheque nos. 14366 dated 20th September, 2003 for Rs.3,26,046/- and 146367 dated 20.09.2003 for Rs.5,00,000/- drawn on state Bank of Indian, Saavanpur, towards partial charge of your debt and/or liability against our client. The said cheques were presented with State Bank of Indore, Chandni Chowk, Delhi-6 in which our client had an account. The said cheques were presented for clearing and it was dishonoured by your bank with remarks “payment stopped”. Our clients Bank M/s. State Bank of Indore brought this fact to the notice of our client on 12.12.2003.
3. It is therefore, clear from the above that you have committed offence under Section 138 of Negotiable Instruments Act for which you are liable to be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque or with both. The remarks by your banker shows there is not sufficient balance in your account for honouring the cheque and therefore you are also liable to be punished under Section 420 of Indian Penal Code for the offence of cheating.
4. The addressee no.1 is partnership concern addressee no.2 and 4 are its partners. I therefore under Section 141 of Negotiable Instruments act you are liable to be prosecuted for the offence under Section 138 of Negotiable Instruments Act. Addressee No.2 have an intention and motive to cheat our client and are therefore liable to be prosecuted under Section 420 of IPC for the offence of cheating.
5. The impugned cheque was presented with the banker of our client within six months from the date of cheque. The information regarding return of cheque as unpaid has been received by our client on 12.12.2003 and this notice is issued well within 30 days from the date of information received by our clients Bank.

You are therefore, called upon to pay the aforesaid amount of Rs.8,26,046/- being the cheque amount within 15 days from the receipt of this notice failing which I have definite instructions from our client to initiate appropriate criminal proceedings against you under Section 138 of Negotiable Instruments Act read with Section 420 of IPC for the offence of dishonor of cheque and cheating respectively. If any legal action is initiated against you,

you will be responsible for all the cost and consequences arising therefrom.

A copy of this legal notice has been retained in our office for further necessary legal action.

2. Thus, it is apparent that this notice had all the three ingredients which is essential for making it a notice under the provisions contained under Section 138(b) of the N.I. Act and furnished a cause of action to the respondent for filing of a complaint once payment of the dishonored cheques was not forthcoming within 15 days of the receipt of notice. There is no dispute that the said notice was received by the petitioners who also sent a reply, though the reply is not on record.

3. The respondent, instead of taking advantage of the cause of action which arose in their favour enabling them to file a complaint thought it appropriate to again present the cheques and when the cheques were again dishonored they served a notice dated 31.03.2004 informing the petitioner about the second dishonour. The said notice for the sake of reference is also reproduced hereunder:

Ref: Statutory Legal Notice under section 138 read with 142 of the Negotiable Instruments Act, 1881 (as amended up to date)

Sir,

Under instructions from, Kavery Distributors Pvt. Ltd. 309, Inderjeet singh Palace, Delhi Gate, New Delhi-110002 (hereinafter referred to as "My Client"), I serve upon you this statutory legal notice under section 138 read with section 142 of Negotiable Instruments Act as under:-

My client used to sold DAP to you details of transaction is as follows:-

Opening debit balance	: Rs.	4,07,491.60
SALE VALUE	: Rs.	1,86,93,090.00

Less payment received	: Rs.	1,91,00,581.00
Less Credit note issue	: Rs.	57,925.00

Net amount recoverable	: Rs.	21,26,975.60

That you the notice had given the following cheques to my client:-

S.No.	Cheque No.	Date	Drawn on	Amount
1	146366	20.9.2003	State Bank of India Sarvanur,	3,26,046/-
2	146367	20.9.2003	State Bank of India Sarvanur,	5,00,000/-

However, the said cheques were returned by your banker with remarks “INSUFFICIENT FUNDS”. My client was informed by the State Bank of Indore, Chandani Chowk Delhi-who is the banker of my client that the cheque has bounced and you have been unable to meet your contractual obligations. I was given information by the bank about the dishonoring of the said cheque on 23.3.2004.

That it is apparent that you the notice had a dishonest intention to cheat my client since right from the beginning, therefore, you issued cheques with false assurances that the cheques would be honoured on presentation and thereby dishonestly induced.

My client to depart with loan amount which my client would not have done but for the said deception by you. Hence you have committed an offence under section 417,429 IPC.

That by this statutory legal notice under section 138 read with section 142 of the Negotiable Instruments Act, I call upon you to make the payment of the above said cheque amount within the statutory period of 15 days from the receipt of this legal notice failing which my client will be constrained to take appropriate legal action under section 138 read with 142 and also under section 417,420 of IPC at your risk, cost and consequences.

4. On the basis of the aforesaid notice, as the payment had not come forward, the respondent filed a complaint under Section 138 of the N.I. Act against the petitioner which is pending in the Court of learned CMM concerned.
5. After the summons were issued to the petitioners, they came to this Court for quashing of the complaint on the ground that the complaint filed by the respondent on the basis of the second notice is

barred by limitation.

6. Petitioners have relied upon judgments delivered by Hon'ble Supreme Court in the case of Central Bank of India & Anr. Vs. M/s Saxons Farms & Ors. 1999 Crl.L.J. 4571 and Sadanandan Bhadran Vs. Madhavan Sunil Kumar AIR 1998 SC 3043. In Sadanandan Bhadran's case (Supra) it has been held as under:

A cheque can be presented any number of times during the period of its validity by payee. On each presentation of the cheque and its dishonor 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 Cl. (b) of S. 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 Cl. (b) of 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 the receipt of the notice by the drawer, expires.

7. On the strength of this judgment, the petitioner submits that the respondent is not entitled to continue with the complaint, which is, in fact, an abuse of the process of Court and is liable to be dismissed.

8. The respondent has contested the matter and the only plea which has been taken by them is that:

4. The complainant Respondent however reiterates that each time a cheque is presented and bounced, then a right accrues in favour of the complainant to issue notice under Section 138(b) of the Act and cause of action shall arise each time, if the complainant fails to make necessary payment during the stipulated period provided under Section 138 of the Act. If the complainant is unable to file a case within the time period stipulated in the Act then the cause of action as far as the first bouncing of cheque does not survive. However, fresh bouncing of cheque would lead to a fresh accrual of right to issue notices under Section 138 of the Act. Section 138 read with Section 142 of the Act does not state that the notices have to be given only once and due to any default if the complainant is unable to file a complaint within the stipulated statutory time period then the complainant is

foreclosed form pursuing the matter any further. The bouncing of cheque subsequently would give rise to new cause of action and the complainant can still pursue its remedy as required in the statute.

5. If the law as stated by the Petitioner in its petition is held correct then it would tantamount to stating that once the notice is issued for payment of the bounced cheque, the petitioner cannot send notices for the second time, even if the cheque is bounced for the second time. Section 138 has to be strictly complied with for every cause of action and fresh bouncing of cheque leads to a fresh cause of action. Moreover, even in the interpretation of the penal statute, Haedon's rule has to be applied and one has to look at the mischief which is sought to be removed by enactment of a penal law. The person who has dishoured the cheque should not get scot-free by narrow and strict interpretation of the statute. Therefore, each bouncing of cheque give rise to fresh cause of action and subsequently the procedure mentioned in Section 138 can be pursued irrespective of the notices given to the accused earlier or not.

9. However, the aforesaid submissions made on behalf of the respondent is of no consequence because if an offence has been created by the statute in a particular manner and the punishment can be imposed only on the basis of a complaint which again has to be filed in the manner as prescribed in the Statute Book, sympathy and morality does not find place to grant any relief to the respondent in such matter. It is for the respondent to have taken action against the petitioner in accordance with law. Having not done so they cannot choose to represent the cheque for furnishing new cause of action in the absence of anything in written given by the petitioner permitting them to present the cheque against which is not their case.

10. Accordingly, I find that the complaint filed by the respondent against the petitioner is misconceived and is barred by limitation as held by Hon'ble Supreme Court in the judgments quoted above.

11. Thus, the complaint bearing No.1203/1/04 under Section 138 of

the N.I. Act titled as *M/s Kavery Distributors Pvt. Ltd. Vs. M/s Mrithyunjaya Agriculture Store & Ors.* pending in the Court of MM, Tis Hazari Courts, Delhi is quashed. The petition is accordingly allowed. The bail bonds, if any, of the petitioners would stand discharged.

Crl.M.A.9888/2004 (Stay)

In view of the orders passed above, this application stands disposed of.

12. A copy of this order be sent to the concerned Metropolitan Magistrate forthwith.

MOOL CHAND GARG,J

JULY 29, 2009
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