

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

Date of decision: 30th January, 2013

+ **CRL. M.C. 1151/2012**

VIJAY SINGH Petitioner
Through: Mr. Rajiv Bajaj, Adv.

versus

M/S. HINDUSTAN ANTIBIOTICS LTD. & ANR..... Respondents
Through: Ms. Rajdipa Behura, APP for the State.

+ **CRL. M.C. 1705/2012**

VIJAY SINGH Petitioner
Through: Mr. Rajiv Bajaj, Adv.

versus

M/S. HINDUSTAN ANTIBIOTICS LTD. & ANR..... Respondents
Through: Ms. Rajdipa Behura, APP for the State.

+ **CRL. M.C. 1706/2012**

VIJAY SINGH Petitioner
Through: Mr. Rajiv Bajaj, Adv.

versus

M/S. HINDUSTAN ANTIBIOTICS LTD. & ANR..... Respondents
Through: Ms. Rajdipa Behura, APP
for the State.

+ **CRL. M.C. 1707/2012**

VIJAY SINGH Petitioner
Through: Mr. Rajiv Bajaj, Adv.

versus

M/S. HINDUSTAN ANTIBIOTICS LTD. & ANR..... Respondents
Through: Ms. Rajdipa Behura, APP for the State.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. By virtue of these Petitions under Section 482 of the Code of Criminal Procedure (Cr.P.C.), the Petitioner seeks quashing of the cognizance taken by the learned Metropolitan Magistrate ('MM') in four criminal complaints arising out of the dishonour of the four cheques which are tabulated hereunder:-

Sl.No.	Cheque No.	Date	Amount	Drawn on
1.	050842	15.01.2001	2,00,000/-	Bank of Punjab Ltd. Roshan Ara Road, New Delhi.
2.	050843	01.02.2001	2,00,000/-	-do-
3.	050844	15.02.2001	2,00,000/-	-do-
4.	050846	28.02.2001	1,47,481/-	-do-

2. It is admitted case of the parties that after the four cheques were dishonoured on account of '*stop of payments/insufficient funds*' a legal notice under Section 138 of the Negotiable Instruments Act, 1881 (the Act) was served upon the Petitioner. The Respondent No.1 did not take any action in pursuance of the first notice. All the four cheques were presented for collection to the Bank of Punjab. The cheques were again dishonoured as intimated to the Respondent No.1 by memo dated 30.03.2001.

3. The short question for determination in these Petitions is, whether a fresh cause of action can arise on subsequent dishonour of the cheques and non compliance of the legal notice under Section 138 of the Act. In these cases, subsequent notices were sent by registered post to the Petitioner on 14.04.2001 and the same are deemed to be served on 17.04.2001. The cause of action for filing of the complaint arose after 15 days of the service, that is, on 02.05.2001. The instant complaints were filed on 29th May, 2001.
4. The law laid down in *Sadanandan Bhadran v. Madhavan Sunil Kumar (1998) 6 SCC 514* that the failure of the holder of the cheque/payee to file a complaint within one month resulted in forfeiture of the Complainant's right to prosecute the drawer which forfeiture cannot be circumvented by him by presenting the cheque afresh and inviting the dishonour to be followed by a fresh notice was revisited by a three Judge Bench of the Supreme Court in *MSR Leathers v. S. Palaniappan & Anr. Criminal Appeal No.261-264 of 2002*, decided on 26.09.2012.
5. It is, however, urged by the learned counsel for the Petitioner that the cheques can be presented on second or subsequent occasion only if an assurance of payment is made by the drawer of the cheque. I am unable to agree to the submissions raised on behalf of the Petitioner.
6. In *MSR Leathers* the Supreme Court analyzed the provisions of Sections 138 and 142 of the Act. It was held that there was nothing in Section 138 or Section 142 of the Act to curtail the right of the payee on failure of the holder of the cheque to institute prosecution against the drawer when the cause of action to do so had first arisen. The Supreme Court held the payee or the holder of the cheque can defer prosecution till the cheque

which is presented again gets dishonoured for the second or successive time. Paras 21 and 31 of the report are extracted hereunder:-

“21. There is, in our view, nothing either in Section 138 or Section 142 to curtail the said right of the payee, leave alone a forfeiture of the said right for no better reason than the failure of the holder of the cheque to institute prosecution against the drawer when the cause of action to do so had first arisen. Simply because the prosecution for an offence under Section 138 must on the language of Section 142 be instituted within one month from the date of the failure of the drawer to make the payment does not in our view militate against the accrual of multiple causes of action to the holder of the cheque upon failure of the drawer to make the payment of the cheque amount. In the absence of any juristic principle on which such failure to prosecute on the basis of the first default in payment should result in forfeiture, we find it difficult to hold that the payee would lose his right to institute such proceedings on a subsequent default that satisfies all the three requirements of Section 138.

x x x x x x x x x

31. Applying the above rule of interpretation and the provisions of Section 138, we have no hesitation in holding that a prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default which was followed by a statutory notice and a failure to pay had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honour their commitments made in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other similar reason. There is in our opinion no real or qualitative difference between a case where default is committed and prosecution immediately launched and

another where the prosecution is deferred till the cheque presented again gets dishonoured for the second or successive time.”

7. Thus, the Supreme Court clearly laid down that there would be second or successive cause/causes of action so long as the cheque is re-presented and is dishonoured within a period of its validity, that is, subject to the outer limit of six months of when it is drawn.
8. The fact that the drawer of a cheque assures the payee of payment of the cheque amount on a future date may be one of the causes for deferring the prosecution under Section 138 of the Act. In Para 21 in *MSR Leathers* the Supreme Court was quite categorical that the failure to prosecute the drawer of the cheque on the basis of first default in payment would not result in any forfeiture of the payee's right to institute the proceedings under Section 138 on a subsequent default if it satisfies all the three requirements under Section 138.
9. In view of the latest pronouncement in *MSR Leathers*, the Respondent No.1 was well within its right to launch prosecution on the basis of the dishonour of the cheques on 30.03.2001 which was followed by issuance of the notices within 15 days of the dishonour of the cheques.
10. The Petitions are devoid of any merit; the same are accordingly dismissed.
11. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 30, 2013

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