

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

Reserved on: 3rd January, 2013
Pronounced on: 15th January, 2013

+ **CRL. M.C. 2961/2012**

MANINDER SINGH NARULA Petitioner
Through: Mr. Vikas Pahwa, Senior Advocate with
Mr. Manish Miglani, Adv.

versus

PAWAN KUMAR RALLI Respondent
Through: Mr. Amit Bajpai, Adv. along with
Respondent in person.

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

J U D G M E N T

G. P. MITTAL, J.

1. By virtue of this Petition under Section 482 of the Code of Criminal Procedure (Cr.P.C.) the Petitioner seeks quashing of the criminal complaint case No.819/2012 and the summoning order dated 12.07.2012 passed by the Learned Metropolitan Magistrate (MM), Karkardooma Court, Delhi.
2. Before advertng to the grounds raised in the Petition, I would in brief narrate the facts leading to the filing of the complaint under Section 138 of the Negotiable Instruments Act, 1881 (the N.I.Act). According to the Respondent (the Complainant before the MM), three cheques for ₹30 lacs, 20 lacs and 10 lacs drawn on Allahabad Bank and ICICI Bank respectively were issued by the Petitioner in favour of the Respondent

towards discharge of his liability for a loan of ₹60 lacs. After issuing the three cheques in favour of the Respondent, the Petitioner fraudulently instructed his Banker to “stop payment” in respect of the said cheques, since the Petitioner did not have sufficient funds in his account. When the earlier said cheques were presented, the same were dishonoured. The Respondent, therefore, issued a demand notice dated 24.05.2012 calling upon the Petitioner to make the payment of the cheque amount failing which the Respondent shall be compelled to initiate proceedings under Section 138 of the Negotiable Instruments Act, 1881 (the N.I.Act) and under Section 420 IPC. The payment having not been made within a period of 15 days of the receipt of the notice, the Respondent filed a complaint in the Court of MM on 05.07.2012.

3. It is urged by the learned counsel for the Petitioner that although the judgment of the Supreme Court in *Sadanandan Bhadran v. Madhavan Sunil Kumar* (1998) 6 SCC 514 has been overruled by a three Judge Bench decision of the Supreme Court in *MSR Leathers v. S. Palaniappan & Anr. Criminal Appeal No.261-264 of 2002*, decided on 26.09.2012 and it has been held that the holder of the cheque can defer prosecution when he expects the drawer to make arrangement for the funds, yet, the cheque has to be presented again in the Bank for a subsequent cause of action.
4. The learned counsel for the Petitioner argues that Respondent had issued a handwritten notice dated 27.04.2012 which would have been received by the Petitioner on 29.04.2012 and on failure to make the payment within 15 days i.e. by 14.05.2012 the cause of action would have arisen in favour of the Respondent to file a Complaint. Under Section 142 (2) of the N.I.Act, the Respondent was under obligation to file a complaint within a period of one month from the date on which the cause of action

arose to file a complaint. Thus, the complaint could have been filed the Complaint at the most by 14th June, 2012. The Complaint in the instant case was filed only on 05.07.2012 which was clearly barred under Section 142 (b) of the Act. The learned counsel urges that the subsequent notice dated 24.05.2012 does not give a fresh period of limitation to the Respondent to file a complaint on 05.07.2012.

5. On the other hand, learned counsel for the Respondent relies on *MSR Leathers (supra)* and urged that the holder of a cheque can issue successive notices and on failure of the drawer to make the payment, a fresh cause of action would ensue to the holder of the cheque entitling him to file a complaint within a period of one month from the date when the cause of action arose to file a complaint.
6. The learned counsel for the Respondent vehemently canvasses that the notice dated 27.04.2012 was not a notice as envisaged under Section 138 of the N.I.Act as it did not make any mention of payment of the cheque amount and neither gave 15 days time period to make the payment. On the other hand, it simply stated for payment of loan amount along with interest immediately. There was not even a whisper that a complaint under Section 138 of the N.I.Act shall be instituted on failure to make the payment of the cheque amount.
7. The law laid down in *Sadanandan Bhadran* 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 disagreed by a three Judge Bench decision in *MSR Leathers*. The Supreme Court

analyzed the provisions of Section 138 and 142 of the N.I.Act. It held that there was nothing in Section 138 or Section 142 of N.I. 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.”

8. 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.
9. It is admitted case of the parties that the three cheques dated 25.04.2012 were dishonoured on presentation. It is also not in dispute that the first notice dated 27.04.2012 was issued by the Respondent calling upon the Petitioner to make the payment of the loan amount of ₹60 lacs along with interest. Admittedly before issuance of the subsequent notice dated 24.05.2012 the cheques were neither presented again nor the same were dishonoured. The contention raised on behalf of the Respondent is that the handwritten notice dated 27.04.2012 sent earlier to the notice dated 24.05.2012 is not a notice as envisaged under Section 138 of the N.I.Act. Therefore, the same has to be ignored and since notice dated 24.05.2012 is within the stipulated period as laid down under Section 138 of the N.I.Act the complaint filed on 05.07.2012 is within the period of one month from the date when the cause of action arose.
10. There cannot be any gain saying that if the notice dated 27.04.2012 is held to be not a notice under Section 138 of the N.I.Act and is thus ignored, the complaint would be within the period of limitation as laid

down under Section 142 of the N.I.Act. Therefore, it has to be examined whether the notice dated 27.04.2012 is a demand notice under Section 138 of the N.I. Act or not.

11. One of the conditions precedent for holding a drawer of a cheque to have committed the offence under Section 138 of the N.I.Act is that the holder of the cheque must make a demand for payment of the amount of cheque by giving a notice in writing to the drawer of the cheque with regard to the receipt of information by him (the drawer) from the Bank regarding dishonour of the cheque. No form of notice has been prescribed under Section 138 (b) of the N.I. Act.
12. The question of form of notice came up for determination before the Supreme Court in *Central Bank of India & Anr. v. Saxons Farms & Ors.* (1999) 8 SCC 221. In the said case a complaint for dishonour of two cheques were filed in the Court of Judicial Magistrate, First Class. The Magistrate took cognizance in respect of both the complaints. But the High Court quashed the criminal proceedings on the ground that there was no proper notice as required under Section 138 of the N.I.Act. In Para 5 of the judgment, the Supreme Court quoted the contents of the notice which are extracted hereunder:-

“5. We extract below the relevant portion of the notices which is the same in both the notices:-

“The bouncing of the two cheques is a most serious matter. The said act of issuance of cheques knowing fully well that the same shall not be paid constitutes an offence under Section 138 of the Negotiable Instruments Act. As per the provisions of this Act my client through this notice informs you that my client shall represent the two cheques again and if the same are returned unpaid, my client shall report the matter to the police for initiating appropriate criminal

action against you all. My client further reserves the right to file criminal case against all of you for the non-payment of the cheques in question and details given above. Kindly arrange to make the payment of the cheques if you intend to avoid the unpleasant action of my client.”

13. The Hon’ble Supreme Court held that no form of notice is prescribed under Section 138 (b) of the Act. The requirement of Clause (b) of Section 138 of the N.I. Act is that notice shall be given in writing within fifteen days of receipt of information from the bank regarding return of the cheque as unpaid and in the notice a demand for payment of the amount of the cheque has to be made. Paras 7 to 9 of the report in *Saxons Farms* are extracted hereunder:-

“7. Though no form of notice is prescribed in the above clause (b) the requirement is that notice shall be given in writing within fifteen days of receipt of information from the bank regarding return of the cheque as unpaid and in the notice a demand for payment of the amount of the cheque has to be made.

8. The object of notice is to give a chance to the drawer of the cheque to rectify his omission and also to protect an honest drawer. Service of notice of demand in clause (b) of the proviso to Section 138 is a condition precedent for filing a complaint under Section 138 of the Act. In the present appeals there is no dispute that notices were in writing and these were sent within fifteen days of receipt of information by the appellant Bank regarding return of cheques as unpaid. Therefore, the only question to be examined is whether in the notice there was a demand for payment.

9. The last line in the portion of notice extracted above reads as under:

“Kindly arrange to make the payment to avoid the unpleasant action of my client.”

In our opinion it is a clear demand as required under clause (b) of Section 138.”

14. The notice dated 27.04.2012 served by the Respondent on the Petitioner is extracted hereunder:-

*“Date: 27/04/2012
Sh. Mahinder Singh Narula,*

SUB: Loan amount given to you for ₹60,00,000/- (Sixty Lacs Only).

This is to inform you that the loan which you have taken from me for ₹60,00,000/- (Sixty Lacs Only) against which you have issued Cheque Dated 25.04.2012 Number 889953 for ₹30,00,000/- Thirty Lacs only drawn on Allahabad Bank, Sadar Bazar, Delhi-06, another cheque dated 25.04.2012 Number 545420 for ₹20,00,000/- Twenty Lacs only and cheque dated 25.04.2012 Number 545409 for ₹10,00,000/- Ten Lacs Only drawn on ICICI Bank, Sadar Bazar Branch Delhi-11006 has been returned due to stop payment for the above said cheques by you (Mahinder Singh).

This shows that your intention is malafide to return the loan amount and interest pending.

This friendly loan I gave you on your personal request many times on Telephone & scare personally to my house in Rohini many times and told your problem to me, after requesting many time by you to help you I (Pawan Kumar Rolli) gave you the cash loan for ₹60,00,000/- (Sixty Lacs Only) after getting signed many promissory notes, Cash Receipts, 3 cheques, and many other Papers/Documents signed/Promised by you for returning the taken loan amount with interest on time.

Now, on the date and time committed by you to return the loan amount ₹60,00,000/- (Sixty Lacs Only) along with interest pending you have done the “STOP PAYMENT” for the cheques issued by you.

Kindly make the arrangement of payment of loan along with the interest pending immediately.

Kindly make the payment and interest pending clear otherwise I have to take the necessary legal action against you (Mahinder Singh) by the method of law by filing case (Criminal/Civil) against you. etc.

*Thanking you
Pawan Kumar Rolli.
Sd/-
9810178163”*

15. A perusal of the notice reveals that there is mention of issuance of three cheques for the amount of ₹30 lacs, 20 lacs and 10 lacs respectively drawn on the Banks mentioned in the notice. It is further mentioned in the notice that the cheques have been returned due to 'stopping of its payment' by the drawer, that is, the Petitioner. The Respondent called upon the Petitioner to pay the loan amount of ₹ 60 lacs (which was the cheque amount) along with interest. The Respondent further informed the Petitioner that on failure of making the payment plus interest, the Respondent would be obliged to take criminal and civil action against the Petitioner.
16. It is true that there is no specific mention of the provision of Section 138 of the N.I.Act in the notice. In my view, the same was not required. It has been laid down in Para 8 of the *Saxons Farms (supra)* that the object of notice is to give an opportunity to the drawer of the cheque to rectify his omission and also to protect an honest drawer.
17. The Petitioner was put to sufficient notice regarding dishonour of the three cheques and he was also called upon to make the payment of the three cheques. Of course, Section 138 of the N.I.Act does not envisage the payment of interest and even if interest is not paid, complaint under Section 138 of the N.I.Act cannot be filed. Yet, simply because the demand of payment of interest was also made in the notice, it would not lose its character of a demand notice under Section 138 of the N.I.Act. Thus, I am convinced that the notice dated 27.04.2012 was a valid demand notice issued by the Respondent.
18. It is urged by the learned counsel for the Respondent that defence of an accused cannot be taken into consideration to invoke extraordinary

jurisdiction under Section 482 Cr.P.C. to quash the criminal complaint. There is no dispute about the proposition that the powers under Section 482 Cr.P.C. have to be used sparingly and with circumspection, even a plausible defence of an accused cannot ordinarily be taken into consideration to exercise jurisdiction under Section 482 Cr.P.C.

19. In *Suryalakshmi Cotton Mills Limited v. Rajvir Industries Limited & Ors.* (2008) 13 SCC 678, the Supreme Court held that High Court can take into consideration the documents of unimpeachable character for the purpose to find out as to whether continuance of criminal proceedings would amount to abuse of process of Court.
20. In the instant case, the notice dated 27.04.2012, which is admitted by the Respondent and which has been held by me to be a legal notice under Section 138 of the N.I.Act would clearly show that the complaint was barred under Section 142(b) of the N.I.Act, as the same was not filed within a period of one month after the expiry of 15 days of receipt of the notice dated 27.04.2012.
21. In the circumstances, the continuance of proceedings in the complaint case against the Petitioner would be an abuse of process of Court. The complaint dated 05.07.2012 and the summoning order dated 12.07.2012 passed therein are quashed.
22. The Petition is allowed in above terms.
23. Pending Applications stands disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 15, 2013

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