

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Criminal Revision No.238 of 2018

(Nikhil Ashok Bawane .vs. Ravi Bhawarlal Chopda and another)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr. R.S. Giripunje, Advocate for Applicant
Mr. H.R. Dhumale, APP for Non-applicant No.2/State.

CORAM : Manish Pitale, J.
DATED : June 25, 2019.

This revision application has been filed by the original complainant challenging order dated 12.09.2018 passed by the Sessions Court, Nagpur, whereby order passed by the Magistrate in favour of the complainant, has been quashed and set aside and the revision that was filed by the non-applicant no.1 was allowed.

2. On a complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881, process was issued by the Court of Magistrate, having taken into consideration the fact that the statutory requirements under Section 138 of the said Act were satisfied.

3. The said order was challenged by the non-applicant no.1 on the ground that the complaint filed by the applicant herein was based on presentation of the cheque in question for a second time and issuance of

statutory notice as contemplated under Section 138 of the said Act. It was the contention of the non-applicant no.1 that the Court of Magistrate could not have issued process on such a complaint filed by the applicant, which was based on a subsequent presentation of the cheque and its dishonour because no prosecution was launched on behalf of the applicant on the first occasion when the said cheque was presented and dishonoured.

4. The said contention of the non-applicant no.1 was accepted by the Sessions Court in the impugned judgment and order, relying upon judgment of a two judge Bench of the Hon'ble Supreme Court in the case of **Sadanandan Bhadran .vs. Madhavan Sunil Kumar** reported in **(1998) 6 Supreme Court Cases 514**.

5. The learned counsel appearing for the applicant contended that the said reasoning of the Sessions Court in the impugned order is wholly unsustainable, in view of the fact that the aforesaid view of the two judge Bench of the Hon'ble Supreme Court stood overruled by a subsequent judgment of a three judge Bench of the Hon'ble Supreme Court in the case of **MSR Leathers .vs. S. Palaniappan** reported in **(2013) 1 Supreme Court Cases 177**.

6. This Court issued notice on the present application on 26.03.2019. The office note shows that the non-applicant no.1 has been served but none appears on behalf of the said non-applicant. The

learned APP has appeared for non-applicant no.2/State.

7. Heard learned counsel for the applicant. It is pointed out that in the aforesaid three judge Bench judgment of the Hon'ble Supreme Court in the case of **MSR Leathers .vs. S. Palaniappan** (supra), the earlier view of the two judge Bench of the Hon'ble Supreme Court in the case of **Sadanandan Bhadran .vs. Madhavan Sunil Kumar** has been expressly overruled and it has been held that prosecution based upon second or successive dishonor of the cheque is also permissible so long as the same satisfies the requirement stipulated under Section 138 of the said Act.

8. Hence, it is clear that the impugned judgment and order passed by the Sessions Court is unsustainable as it is based on ignorance of the latest position of law. Accordingly, the present revision application is allowed. The impugned order passed by the Sessions Court is quashed and set aside. Consequently, the proceedings before the Court of Magistrate bearing S.C.C. No. 14014 of 2016 stand revived and the Court of Magistrate is directed to take up the proceedings for consideration expeditiously.

JUDGE