CASE NO.:
Appeal (crl.) 721 of 2001

PETITIONER:
UNIPLAS INDIA LTD. AND ORS,

RESPONDENT:
STATE (GOVT.OF NCT OF DELHI) AND ANR.

DATE OF JUDGMENT: 17/07/2001

BENCH:
K.T. THOMAS & R.P: SETHI

JUDGMENT:
JUDGMENT

2001 (3) SCR 985

The Judgment of the Court was delivered by THOMAS, J. Leave granted.

The drawer of a cheque clutches on a straw for wriggling out of the clinch of a criminal prosecution he is caught in, but the straw is too fragile to be of any help to him. He thought that a previous notice sent by the payee Of the cheque, after it was once bounced, was enough to knock off the prosecution based on a second presentation and second bouncing of the cheque. But neither the trial court nor the High Court favoured the accused in his endeavour to secure a discharge from the case on the said ground. Thus he has come up with this appeal.

Respondent company filed a complaint before the court of a Chief Metropolitan Magistrate against three appellants for the offence under Section 138 of the Negotiable Instrument Act (for short the NI Act) on the following inter alia, allegations;

The third appellant is the Managing Director of the first appellant company of which the second appellant is Vice President. A cheque in a sum of Rs. 50 lacs and another cheque for above Rs, 3 lacs have been drawn by the first appellant in favour of the respondent complainant. The said cheques were presented before the Oriental Bank of Commerce but they were dishonoured by the Bank as per memo dated 23.2.1996. Notice was sent tb the appellants on 2.3.1996 calling upon them to pay the amount As the appellants did not pay the amount within the statutory period, a complaint was filed on 11.4.1996.

The stand of the appellants is this: The cheque was earlier presented by the payee and then it was dishonoured by the Bank and thereafter a notice was issued to the drawer on 1.12.1995, but the payee did not file a complaint within one month of the expiry of 15 days after the said notice and hence he cannot create one more cause of action by presenting the cheque once again. At any rate the complaint filed on 11.4.1996 is beyond the time prescribed by law and consequently the court is debarred from taking cognizance of the offence upon the said complaint, contended the appellants. In support of the said contention appellants cited the decisions of this Court in Sadanandan Bhadran v. Madhayan Sunil Kumar. [1998] 6 SCC 514.

The trial court repelled the said contention on the premise that the notice issued on 1,12.1995 was under Section 434 of the Companies Act which cannot be treated as a notice under section 138 of the Nl Act. This position of the trial court was upheld by the learned Single Judge of the High Court on the strength of the following reasons ;

"A notice under Sections 433 and 434 of the Companies Act cannot be treated

as a notice under Section 138 of the Act Therefore, the contention of learned counsel for the petitioners that notice dated 1.12.1995 should be taken as notice under Section 138 of the Act, is unsustainable. In the case on hand, notice under Section 138 of the Act was dated 123.1996. It is this notice which is in accordance with the provisions of Section 138 that proceedings can be set into motion by giving fifteen day's time to comply with the demand and thereafter within one month file a complaint. The period, if calculated from the issue of notice dated 12,3.1996, brings the complaint well within the period of limitation. Therefore, from the facts of the case alleged in the complaint, the position is clear that no exception can be taken against the order of the Magistrate taking cognizance of the offence under Section 138 of the Act against the petitioners."

Learned counsel for the appellants contended that the High Court went wrong in saying that a notice under Sections 433 and 434 of the Companies Act cannot be treated as a notice under Section 138 of the Nl Act Any notice containing a demand for payment of the amount covered by the dishonoured cheque can as well be a notice under Section 138 of the Nl Act, according to him.

Sections 433 and 434 of the Companies Act are provisions dealing with cases in which a company may be wound up by the court. Section 434 has to be read in association with Section 433(a) of the said Act Clause (e) of section 433 contains one of the six clauses for which the company can be wound lip by the court, i.e. "if the company is unable to pay its debts". Section 434 contains the two instances when a company is deemed to be unable to pay its debts. Section 434 of the Companies Act is extracted below:

"Company when deemed unable to pay its debts.-(1) A company shall be deemed to be unable to pay its debts-(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees men due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) if execution or other process issued on a decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the court that the company is unable to pay its debts and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

(2) the demand referred to in clause (a) of sub-section (1) shall be deemed to have been duly given Under the hand of the creditor if it is signed by any agent or legal adviser duly authorised on his behalf, or in the case of a firm, if it is signed by any such agent or legal adviser or by any member of the firm."

What is provided in the section is that a creditor should make a demand requiring me company to pay the amount due to the creditor. The mode of making such demand is also delineated in the section. If any such demand is made, could it be said that such demand would be useful only for the purpose of winding up of the company? Clause (b) of the proviso to Section 138 of the NI Act also contemplates the making of a demand for payment of the cheque amount as an indispensable step to snowball into a cause of action. The said proviso is extracted below for being used in this context :

"(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".

If any notice is issued under Section 434 of the Companies Act within 15 days of the information from the Bank regarding return of the cheque drawn by a company as unpaid, such a notice would as welt be good enough under clause (b) of the proviso to Section 138 of the NI Act.This Court has held in Sadanandan Bhadran (supra) that a complainant cannot create successive causes of action with the same cheque. If no complaint is filed on the first cause of action the payee is disentitled to create another cause of action to file a complaint for the purpose of launching a prosecution on it. Para 6 of the said decision contains the thrust of the reasoning. After referring to the four actual premises necessary to concatenate into a cause of action MK. Mukherjee, J. has said thus:

"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 me 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 me 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 Act leaves no room for doubt that cause of action within the meaning of Section 142(c) arises -'and can arise - only once."

The said decision was followed by this Court in SIL Import, USA v. Exim Aides Silk Exporters, Bangalore, [1999] 4 SCC 567.

One of the indispensable factors to form the cause of action envisaged in Section 138 of the Nl Act is contained in clause (b) of the proviso to that section. It involves the making of a demand by giving a notice in writing to the drawer of the cheque "within fifteen days of receipt of information by him from the bank regarding the return of the cheque as unpaid." If no such notice is given within the said period of 15 days no cause of action could have been created at all.

Thus, it is well neigh settled that if dishonour of a cheque has once snowballed into a cause of action it is not permissible for a payee to create another cause of action with the same cheque, The question in this case is, did the payee issue notice within 15 days after the first dishonour of the cheque. The question can as well be put in another form. Was the notice dated 1.12.1995 within 15 days of the date of intimation from the bank regarding dishonour, or was it sent after that period of 15 days? In fact, that is the crux of the issue involved in this case.

Appellants have not stated that the interval between the date of the earlier dishonour of the cheque and the notice dated 1,12.1995 did not exceed the statutory period of 15 days. To a query by us learned counsel for the appellants candidly admitted that the notice of 1,12. 1995 was issued only after the expirty of 15 days from receipt of the intimation from Bank regarding the dishonour. If so the said dishonour remained without any further escalation and need not snowball into a cause of action. Its corollary is that the payee was not prevented from presenting the cheque once again within the permitted period and to make use of such presentation and the subsequent dishonour for a cause of action to be founded for launching a complaint as in the present case. We, therefore, dismiss this appeal