



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL, 2015

BEFORE

THE HON'BLE MR. JUSTICE A.N.VENUGOPALA GOWDA

CRIMINAL PETITION NO.2550/2015

BETWEEN:

P. SURENDRA KUMAR
S/O. PARUCHURI
AGED ABOUT 49 YEARS
M/s. PARUCHURI GLOBAL FOUNDATION
NO.252, 14TH CROSS
2ND BLOCK, R.T. NAGAR
BENGALURU - 560 032.

... PETITIONER

(BY SRI H.SHANTHI BHUSHAN, ADV.)

AND:

M/s. VARKEYS RETAIL VENTURES PVT. LTD.,
REPRESENTED BY ITS DIRECTOR
Mr. P.I. DENNIS
NO.32/1188, CHATHANGATTU ROAD
PALARIVATTOM, KOCHI - 25
KERALA.

... RESPONDENT

THIS CRL.P. IS FILED UNDER S.482 CR.P.C., PRAYING TO
QUASH THE ENTIRE PROCEEDINGS PENDING ON THE FILE OF
XXVII ADDL. C.M.M., BENGALURU IN PCR NO.15347/2014

REGISTERED ON 16.10.2014 AGAINST THE PETITIONER FOR THE OFFENCE PUNISHABLE UNDER Ss.138 AND 142 OF NEGOTIABLE INSTRUMENTS ACT.

THIS CRL.P. COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

The petitioner, shown as an accused, in a private complaint filed by the respondent, alleging commission of an offence under S.138 of the Negotiable Instruments Act, 1881 (for short, '*the Act*'), filed this petition by contending that the complaint is not maintainable and no such proceeding could be launched against him. This petition was filed under S.482 of Cr.P.C., to quash the entire proceedings in PCR No.15347/2014 pending on the file of the XXVII ACMM, Bengaluru.

2. Background facts, sans unnecessary details are as under:

In the complaint, the respondent herein has alleged that the petitioner had received from him ₹20,67,000/-, in the matter of arranging a loan of ₹15,00,00,000/- and as the loan could not be arranged, when the said amount was

sought to be returned, issued four cheques of ₹4,00,000/- each, drawn on Corporation Bank, R.T. Nagar, Bengaluru - 32 and agreed to pay in due course, the balance of ₹4,67,000/- in cash or by cheque. The cheque when presented for encashment were dishonoured by the said bank and a demand notice dated 05.04.2011 was given, to pay the amount. It was alleged that in view of the request made by the petitioner to re-present the cheque again for encashment by assuring that the cheque will be honoured by his Bank, the cheque was again re-presented for encashment. The cheque was again dishonoured on 20.05.2011, for the reason 'funds insufficient'. After causing a demand notice dated 03.06.2011 and payment of the cheque amount having not been made, complaint was filed before the Judicial Magistrate at Ernakulam. The complaint having been returned by making reference to the decision in *DASHRATH RUPSINGH RATHOD Vs. STATE OF MAHARASHTRA AND OTHERS, 2014 AIR SCW 4798* and the complaint having been presented before the XXVII ACMM,

Bengaluru and registered as PCR No.15374/2014, this petition was filed, for grant of the aforesaid relief.

3. Sri H. Shanthi Bhushan, learned advocate, contended that the respondent having given a legal notice on 05.04.2011, demanding payment of the amount shown in the bounced cheque and having not filed a complaint and having caused another notice on 3.06.2011 demanding payment of the bounced cheque, is debarred from filing the complaint i.e., based on the notice issued on 03.06.2011. He submitted that a complaint having not been filed pursuant to the notice given on 05.04.2011, it is not open to initiate prosecution for offence under S.138 / S.142 of the Act, in respect of dishonour of the cheque for the second time. He placed reliance on the decisions in (i) *SADANANDAN BHADRAN Vs. MADHAVAN SUNIL KUMAR, (1998) 6 SCC 514* and (ii) *S.L. CONSTRUCTION AND ANOTHER Vs. ALAPATI SRINIVASA RAO AND ANOTHER, AIR 2009 SC 1538* and (iii) *V. VENKATESA SUBBU Vs. M/s. JAYA BHASKARAN AND CO. AND ANOTHER, 2004 CRL.L.J. 855.*

4. The cheque in question having been dishonoured by the petitioner's bank, with remark 'funds insufficient', a demand notice was given on 05.04.2011. According to the complainant, the petitioner requested to re-present the cheque again for encashment and assured that the cheque will be honoured on such re-presentation. The cheque having been re-presented and having been again returned on 20.05.2011, for the reason 'funds insufficient', demand notice dated 03.06.2011, to pay the amount covered under the cheque was given. Payment having not been made, private complaint was lodged on 18.07.2011, before the Magistrate at Ernakulam. The complaint having been returned, in view of the decision in *DASHRATH RUPSINGH RATHOD* (supra), was presented before the XXVII ACMM, Bengaluru.

5 In *SADANANDAN BHADRAN* (supra), the complainant, had, after dishonour of a cheque issued in his favour, taken steps to serve upon the accused, the drawer of the cheque, a notice under clause (b) of proviso to

S.138 of the Act. No complaint, however, was filed by the complainant, upon failure of the accused to arrange the payment of the amount covered by the cheque. Instead, the complainant, payee of the cheque, had presented the cheque for collection once again, which was dishonoured for the second time, for want of sufficient funds. Another notice was served on the drawer of the cheque to arrange payment within 15 days of the receipt of the notice. After failure of the drawer to do so, payee filed complaint against the drawer, under S.138 of the Act. Accused filed an application, seeking discharge, on the ground that the complainant cannot create more than one cause of action in respect of a single cheque and the complaint in question having been filed on the basis of the second presentation and resultant second cause of action, was not maintainable. Accepting the contention, complaint having been dismissed, was questioned in the High Court and the impugned order having been upheld, the matter, when eventually was taken up before the Apex Court, the point formulated for determination was *whether the payee or*

holder of a cheque can initiate prosecution for offence under S.138 of the NI Act, 1881, for its dishonour for the second time, even if he had not initiated any action on the earlier cause of action? Question was answered in the negative and the appeal was dismissed.

6. Following the decision rendered in *SADANANDAN BHADRAN* (supra), in *S.L.CONSTRUCTION* (supra), it was held that, cause of action for filing of complaint would be deemed to have arisen only once and not more than once.

7. In *V. VENKATESA SUBBU* (supra), following the decision in *SADANANDAN BHADRAN's* case, it was held that the cause of action having already arisen in respect of dishonour of the cheque and consequent receipt of notice demanding cheque amount, complaint filed after second dishonour of cheque is liable to be dismissed, as no cause of action would arise.

8. The decision in *SADANANDAN BHADRAN* (supra), was followed in several subsequent decisions, by the various High Courts and the Apex Court, including in *PREM CHAND VIJAY KUMAR Vs. YASHPAL SINGH AND ANOTHER*, (2005) 4 SCC 417

9. In *MSR LEATHERS Vs. S. PALANIAPPAN*, (2013) 1 SCC 177, four cheques issued in favour of the appellant, were presented for collection. The cheques were dishonoured for 'insufficiency of funds'. A notice demanding payment of the amount covered by the cheques was issued. Despite receipt of notice, drawer did not arrange the payment. The cheques were presented for the second time on the assurance that the funds necessary for encashment of the cheques shall be made available. The cheques presented for the second time were dishonoured on the ground of 'insufficiency of funds'. Notice under Clause (b) of proviso to S.138 of the Act was given demanding payment by the drawer within 15 days. Despite service of notice, payment having not been made,

complaint was filed for the offence punishable under S.138 of the Act. The Magistrate took cognizance and issued summons. Accused having entered appearance, sought discharge, *primarily on the ground that the complaint had not been filed within 30 days of expiry of notice, based on the first dishonour of the cheque/s.* Application having been dismissed and the High Court having been approached, revision petition was allowed, by relying upon the decision in *SADANANDAN BHADRAN's* case. Apex Court having been approached for relief by the complainant and the Division Bench having expressed its reservation about the correctness of the view taken in *SADANANDAN BHADRAN'S* case (supra), referred the matter to a Larger Bench. Considering the rival contentions and also the fact that the decision in *SADANANDAN BHADRAN's* case had been followed in several subsequent decisions, without disturbing or making any addition to the rationale behind the decision in *SADANANDAN BHADRAN'S* case, the reference was answered as follows:

"33. 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.

34. The controversy, in our opinion, can be seen from another angle also. If the decision in *Sadanandan Bhadran's* case is correct, there is no option for the holder to defer institution of judicial proceedings even when he may like to do so for so simple and innocuous a reason as to extend certain accommodation to the drawer to arrange the payment of the amount. Apart from the fact that an interpretation which curtails the right of the parties to negotiate a possible settlement without prejudice to the right of holder to institute proceedings within the outer period of limitation stipulated by law should be avoided we see no reason why parties should, by a process of interpretation, be forced to launch complaints where they can or may like to defer such action for good and valid reasons. After all, neither the courts nor the parties stand to gain by institution of proceedings which may become unnecessary if cheque amount is paid by the drawer. The Magistracy in this country is overburdened by an avalanche of cases under Section 138 of Negotiable Instruments Act. If the first default itself must in terms of the decision in *Sadanandan Bhadran's* case result in filing of prosecution, avoidable litigation

would become an inevitable bane of the legislation that was intended only to bring solemnity to cheques without forcing parties to resort to proceedings in the courts of law. While there is no empirical data to suggest that the problems of overburdened Magistracy and judicial system at the district level is entirely because of the compulsions arising out of the decisions in *Sadanandan Bhadran's* case, it is difficult to say that the law declared in that decision has not added to court congestion.

35. In the result, we overrule the decision in *Sadanandan case* and hold that the prosecution based upon second or successive dishonour of the cheque is also permissible so long as the same satisfies the requirements stipulated in the proviso to Section 138 of the Negotiable Instruments Act. The reference is answered accordingly. The appeals shall now be listed before the regular Bench for hearing and disposal in the light of the observations made above."

(emphasis supplied)

10. As already noticed, in the cases of (1) S.L. CONSTRUCTION and (2) V. VENKATESA SUBBU (SUPRA), the decision rendered in SADANANDAN BHADRAN's case was followed, without disturbing or making any addition to the rationale behind the decision in SADANANDAN BHADRAN's case. In view of the authoritative pronouncement by the Larger Bench, in MSR LEATHERS (supra), the decision rendered in S.L. CONSTRUCTION (supra) is impliedly overruled, on the question relating to multiple presentation of cheque and multiple notices given.

11. In KAMLESH KUMAR Vs. STATE OF BIHAR AND ANOTHER, (2014) 2 SCC 424, on dishonour of the cheque in question on 25.10.2008, although a legal notice dated 27.10.2008 was issued to the drawer of the cheque – appellant, by making a demand for payment of the amount of the said cheque in terms of S.138 of the Act, but no complaint was filed under S.138 of the Act, on the basis of that notice. Thereafter, the cheque was again presented before the Bank, on 10.11.2008, for encashment, but it was again dishonoured. Consequently, another legal notice dated 17.12.2008 was issued to the drawer of the cheque – appellant, on the basis of the said dishonour of the cheque on 10.11.2008. Finding no response to the said notice dated 17.12.2008, a complaint under Section 138 of N.I. Act was filed by the payee of the cheque – respondent No.2, against the drawer of the cheque – appellant. The accused/appellant filed petition under Section 482 Cr.P.C. for quashing of the complaint, on the ground that it was untenable, as it was clearly time barred and not filed within the stipulated period prescribed in law.

The criminal petition filed under Section 482 Cr.P.C. having been dismissed, Apex Court was approached for relief. Considering the factual background, rival contentions and the relevant statutory provisions, it has been held as follows:

"8. In the present case, the complainant had not filed the complaint on the dishonor of the cheque in the first instance, but presented the said cheque again for encashment. This right of the complainant in presenting the same very cheque for the second time is available to him under the aforesaid provision. This aspect is already authoritatively determined by this Court in *MSR Leathers vs. S.Palaniappan & Anr. (2013) 1 SCC 177*. The Specific question which was formulated for consideration by the Court and referred to three Judge Bench in that case, was as under:

"3. '2. ... Whether the payee or holder of a cheque can initiate prosecution for an offence under Section 138 of the Negotiable Instruments Act, 1881 for its dishonor for the second time, if he had not initiated [any action] on the earlier cause of action?' (*Sadanandan Case, SCC p.516, para 2*)"

This question was answered by the three Judge Bench in the aforesaid matter in the following manner: (*MSR Leathers vs. S.Palaniappan & Anr. (2013) 1 SCC 177, SCC pp.188-89, para 15*)

"15. What is important is that neither Section 138 nor Section 142 or any other provision contained in the Act forbids the holder or payee of the cheque from presenting the cheque for encashment on any number of occasions within a period of six months of its issue or within the period of its validity, whichever is earlier. That such presentation will be perfectly legal and justified was not disputed before us even at the Bar by the learned counsel appearing for the parties and rightly so in the light of the judicial pronouncements on that question which are all unanimous. Even *Sadanandan case*, the correctness whereof we are examining, recognized that the holder or the payee of the cheque has the right to present the same any number of times for

encashment during the period of six months or during the period of its validity, whichever is earlier.”

To this extent, there cannot be any quarrel and the act of the complainant in presenting the cheque again cannot be questioned by the appellant.”

(emphasis is supplied)

12. An identical issue raised by an accused person, in CrI.P.No.3774/2013 (SRI R. LAKSHMINARASIMHA Vs. SRI GOUTHAMCHAND), was negated and the petition was dismissed on 16.04.2015.

13. Since the decision in *SADANANDAN BHADRAN'S* case has been overruled in *MSR LEATHERS* (supra) and as it has been held, that the prosecution based on the second or successive dishonour of cheque is permissible, so long as cheque is valid, as specified in S.138 of the Act, I do not find any merit in the contention urged by the learned advocate for the petitioner.

In the result, petition is dismissed. However, learned Magistrate shall decide the case with expedition.

Sd/-
JUDGE

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