

PETITIONER:
M/S.ELECTRONICS TRADE & TECHNOLOGYDEVELOPMENT CORPORN. LTD.,

Vs.

RESPONDENT:

DATE OF JUDGMENT: 22/01/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
JT 1996 (1) 643 1996 SCALE (1)636

ACT:

HEADNOTE:

JUDGMENT:

WITH
CRIMINAL APPEAL NOS. OF 1996
(Arising out of SLP (Crl) Nos.3009-13 of 1992)
O R D E R

Leave granted.

We have heard the counsel on both sides.

The appellant laid the complaints under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') for dishonor of cheque for insufficiency of the funds in the accounts of the accused. The complaint of the appellant read thus:

"The above cheque was presented by the complainant on 28.1.1990, through their Bankers M/s. Hyderabad Bank, Sarojini Devi Road, Secunderabad for realisation, with the promise by the accused, that the same will be honored when presented. However, the said cheque was dishonoured with the Banker's endorsement dated 29.11.1990. "1. referred to drawer. 2. instructions for stopping payment and 3. stamped exceeds arrangements". It is evident from the Banker's memo dated 29.11.1990 that the said cheque was dishonoured by the Bank for wants of funds only.

On receipt of the intimation dated 29.11.1990 from the Bank, the complainant has issued a notice on 6.12.1990 to the accused by Registered Post Acknowledgement Due, informing him that the cheque dated 30.6 1996 was dishonoured by their bankers and demanded payment within 15 days from the date of receipt of the said notice. The said notice was received and

acknowledged by the accused. No Payment has been made by the accused as required under Section 138(C) of the Negotiable Instruments Act. The accused 2 also stood as a guarantor to the payment of the complainant, as the proprietor of M/s. V.V. Rama Rao and Co., Saleemnagar Colony Hyderabad.

The accused 2 has issued the cheque knowing fully well that he has no Bank balance to their credit and he cannot honour the cheque for want of funds alone. He has not taken any steps to honour the cheque and arrange payment as required under Section 138(C) of the Negotiable Instruments Act. The accused has thereby committed the offence under Section 138 of the Negotiable Instruments Act. The dishonesty intention of the accused in instructing the Bank to stop payment is evident from the conduct of the accused. He has instructed their Bank to stop payment only with the malafide intention of escaping from the liability under Section 138 of the Negotiable Instruments Act. He has so instructed their Bank so he has no funds to their credit. Hence the accused is liable for the offence Under Section 138 of 'the negotiable Instruments Act.'

Section 138 of the Act was brought on statute by Central Act 66 of 1988 w.e.f. April 1, 1989 with a view to penalise the accused in cases of dishonor of certain cheques for insufficiency of funds in the accounts of the accused. It reads thus:

"138. Dishonor of cheque for insufficiency, etc., of funds in the accounts. - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless :

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or

within the period of its validity, whichever is earlier;

(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: and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation. - For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

Explanation to Section 138 amplifies that for the purpose of the Section, "debt or other liability" means a legally enforceable debt or other liability.

It would thus be clear that when a cheque is drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person out of the account for the discharge of the debt in whole or in part or other liability returned by the bank with the endorsement like (1) in this case, "I refer to the drawer" (2) "instructions for stoppage of payment" and (3) "stamp exceeds arrangement", it amounts to dishonor within the meaning of Section 138 of the Act. On issuance of the notice by the payee or the holder in due course after dishonor, to the drawer demanding payment within 15 days from the date of the receipt of such a notice, if he does not pay the same, the statutory presumption of dishonest intention, subject to any other liability, stands satisfied.

Shri Nageswara Rao, learned counsel appearing for the respondents, contended that stoppage of payment due to instructions does not amount to an offence under Section 138 and that, therefore, the ingredients in Section 138 have not been satisfied. We find no force in the contention. The object of bringing Section 138 on statute appears to be to inculcate faith in the efficiency of banking operations and credibility in transacting business on negotiable instruments. Despite civil remedy, Section 138 intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induces the payee or holder in due course to act upon it. Section 138 draws presumption that one commits the offence if he issues the cheque dishonestly. It is seen that once the cheque has been drawn and issued to the payee and the payee has presented the cheque and thereafter, if any instructions are issued to the Bank for non-payment and the cheque is returned to the payee with such an endorsement, it amounts to dishonor of cheque and it comes within the meaning of Section 138. Suppose after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course presents the cheque to the Bank for payment and when it is returned on instructions, Section 138 does not get attracted. Under these circumstances, since the accused has

not made the payment within 15 days from the date of the receipt of the notice issued by the payee or the holder in due course, the dishonest intention is inferable from those facts. Accordingly, the ingredients as contained in Section 138 have been prima facie made out in the complaint. The High Court, therefore, was wholly incorrect in its conclusion that the ingredients have not been made out in the complaint. The orders of the High Court quashing the complaints are illegal. They are accordingly set aside and the trial Court is directed to dispose of the matters as expeditiously as possible. It is made clear that we do not intend to express any opinion on merits.

The appeals are allowed.

JUDIS