CRR No.873 of 2015

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 873 OF 2015

1. Manjeet Singh Dhillan S/o Darshan Singh Dhillan Aged About 48 Years R/o Near D.D.M. School, D.D.M. Road, Tulsi Nagar Korba, Police Station Kotwali, Korba, Tahsil And District Korba Chhattisgarh.

---- Applicant

Versus

1. Baljinder Singh Rajpal S/o Late Avatar Singh Rajpal Aged About 50 Years R/o Sindhi, Near Gurudwara, Ward No. 4, Korba, Korba, Police Station Kotwali, Korba, Tahsil And District Korba Chhattisgarh.

2. State Of Chhattisgarh Through The District Magistrate/ Collector, Korba Chhattisgarh.

---- Respondents

For Applicant	Mr. K.K. Singh, Advocate
For Respondent/Complainant	Mr. Neeraj Mehta, Advocate
For Respondent /State	Mr. Amit Verma, Panel Lawyer

Order on Board

By

Hon'ble Shri Justice Goutam Bhaduri

18/1/2024

1. The present revision is filed against the judgment dated 29-9-2015 rendered by the Additional Sessions Judge/Special Judge (Atrocities), Korba, in Cr.A.No.01/15, which is arising out of judgment dated 26-12-2014 passed by the Chief Judicial Magistrate, Korba, in Cr.Case No.1735/12.

2. The facts of the case, in brief, are that a complaint was filed by the respondent No.1 Baljinder Singh Rajpal against the applicant Manjeet Singh Dhillan, alleging, *inter alia*, that since both of them were known to each other, on the request of the applicant the complainant gave an amount of ₹ 3.00 lacs on 26-3-2011 towards loan and for which the post dated cheque bearing No.822543 dated 26-3-2012 was given to the respondent No.1. After one year when the cheque was presented on 3-4-2012 it got dishonoured on 6-4-2012. The said fact was informed to the applicant. Again on the advise of the applicant, the cheque was presented before the Bank on 15-5-2012, but it was again dishonoured on 18-5-2012. Again it was presented on 15-6-2012, which was got dishonoured on 18-6-2012. Thereafter, the complainant sent a notice to the applicant on 28-6-2012, but the said notice returned back on 29-6-2012 with an endorsement that the 'doors are closed'. Consequently, the complaint case under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') was filed. Both the parties adduced their evidence before the Judicial Magistrate. On conclusion of trial, the Court below convicted the applicant under Section 138 of the Act and sentenced him to undergo RI for six months and also directed the applicant to pay an amount of ₹ 3.50 lacs as compensation to the complainant. Aggrieved by such judgment, the applicant filed the criminal appeal before the Additional Sessions Judge, who, in turn, by the impugned judgment, maintained the judgment rendered by the trial Court and dismissed the appeal filed by the applicant. Thus, this revision.

3. Learned counsel appearing for the applicant would submit that the cheque was initially deposited on 3-4-2012 and having been dishonoured for the first time the cause of action arose. He would further submit that though the legal notice was issued, but the same was not served upon the applicant with an endorsement that the doors are closed and as per Section 138 and 142 of the Act the notice is duly required to be served.

4. Learned counsel appearing for the respondent/complainant, *per contra,* would submit that as per Section 94 of the Act the statutory presumption would draw when the notice is served, therefore, the argument would not be available to the applicant.

5. I have heard learned counsel appearing for the parties and perused the record.

6. A post dated cheque bearing No.822543 dated 26-3-2012 was given by the applicant to the complainant for repayment of loan amount. The same was was presented by the complainant in the Bank on 3-4-2012, however, it got dishonoured on 6-4-2012 for want of sufficient funds. As per the statement of the complaint, it is evident that on the advise of the applicant the said cheque was again presented on 15-5-2012, but it was again dishonoured on 18-5-2012. Having been contacted with the applicant and on his advise, the cheque again presented on 15-6-2012 for clearance, which was got dishonoured on 18-6-2012. In this regard, respective documents are on record i.e. Ex.P/1, P/2, P/3 & P/4.

7. For the sake of brevity the provisions of Sections 138 & 142 of the Act are quoted below :

> "**138. Dishonour of cheque for insufficiency, etc., of funds in the account**.—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 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 provisions of this Act, be punished with imprisonment for a term which may be extended to two years, 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 thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
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> (*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.

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142.*Cognizance of offences*.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(*a*) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(*b*) such complaint is made within one month of the date on which the cause of action arises under clause (*c*) of the proviso to Section 138:

Provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.

(*c*) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under Section 138.

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8. The Supreme Court in the matter of ***Kamlesh Kumar v State of Bihar and Another***[1] held thus at para 8 :

> 8. In the present case, the complainant had not filed the complaint on the dishonour 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

1 (2014) 2 SCC 424

for the second time is available to him under the aforesaid provision. This aspect is already authoritatively determined by this Court in *MSR Leathers* v. *S. Palaniappan* [*MSR Leathers* v. *S. Palaniappan*, (2013) 1 SCC 177 : (2013) 1 SCC (Civ) 424 : (2013) 2 SCC (Cri) 458] . The specific question which was formulated [*MSR Leathers* v. *S. Palaniappan*, (2013) 10 SCC 572 : (2014) 1 SCC (Cri) 410] for consideration by the Court and referred to the three-Judge Bench in that case, was as under: (SCC p. 185, para 3)

> "*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 dishonour for the second time, if he had not initiated [any action] on the earlier cause of action?' (*Sadanandan case* [*Sadanandan Bhadran* v. *Madhavan Sunil Kumar*, (1998) 6 SCC 514 : 1998 SCC (Cri) 1471] , SCC p. 516, para 2)"

This question was answered by the three-Judge Bench [*MSR Leathers* v. *S. Palaniappan*, (2013) 1 SCC 177 : (2013) 1 SCC (Civ) 424 : (2013) 2 SCC (Cri) 458] in the aforesaid matter in the following manner: (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* [*Sadanandan Bhadran* v. *Madhavan Sunil*

> *Kumar*, (1998) 6 SCC 514 : 1998 SCC (Cri) 1471] the correctness whereof we are examining, recognised 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.

9. Reading of the aforesaid judgment, it would show that within six months the cheque may be presented several times, therefore, the submission of the applicant that the cheque which was initially presented on 3-4-2012 the cause of action already arose cannot be considered favaourably for the applicant. The another submission that the notice issued subsequently returned back with an endorsement that 'doors have closed'. Envelope and the registered notice are on record.

10. At this juncture, it would be apt to refer the provisions of Section 94 of the Act, the same are quoted below :

> **94. Mode in which notice may be given**.— Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the

> place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.
>
> If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

11. Reading of the aforesaid provisions would show that when the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid. In view of statutory presumption there would be deemed service. Consequently, the complaint filed by the respondent would be very much within the jurisdiction of learned Judicial Magistrate.

12. The order sheet dated 13-10-2015 of this Court would show that while suspending the sentence and granting bail to the applicant he was directed to deposit entire compensation of ₹ 3.50 lacs on or before the date of furnishing bail bonds and subsequently by order dated 2-9-2016 after the amount was deposited, an amount of ₹ 2.00 lacs was allowed to be withdrawn by the complainant meaning thereby the amount has already been paid.

13. The Supreme Court in the matter of ***Damodar S. Prabhu v Sayed Bablal H.***[2] while examining the object sought to be achieved by provisions of Section 138 and purpose underlying the punishment provided therein has held that Section 138 of the Act cases are meant to secure payment of money by holding thus at para 17 :

> "17… Unlike that for other forms of crime, the punishment here (insofar as the complainant is

2 (2010) 5 SCC 663

> concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.

14. Likewise, in the matter of ***Somnath Sarkar v Utpal Basu Mallick and Another***[3] the same proposition was reiterated by the Supreme Court. This Court also in the matter of ***Smt. Meel Bai v Rameshvar Prasad Chauhan***[4] has taken the similar view.

15. Having considering the proposition which is laid down by the Court since the amount has already been deposited the jail sentence imposed by the Court below is set aside. However, with respect to fine amount the same is maintained. Since the amount has already been deposited by the applicant, the complainant/respondent No.1 would be at liberty to withdraw the same.

16. In the result, the instant revision is allowed to the extent indicated above.

Sd/-

(Goutam Bhaduri)
Judge

Gowri

3 (2013) 16 SCC 465
4 2016 (2) CGLJ 340

CASE NOTE

If the cheque is presented to the Bank several times within its validity, the cause of action will arise when the cheque is dishonored for the last time.

यदि चेक को उसकी वैधता के भीतर कई बार बैंक में प्रस्तुत किया जाता है, तो वाद हेतुक तब उत्पन्न होगा जब चेक अंतिम बार अनादरित हो जाए।

The object of punishment prescribed in Section 138 of the Negotiable Instrument Act is to secure the payment of debt.

परक्राम्य लिखत अधिनियम की धारा 138 में विहित दंड का उद्देष्य ऋण का भुगतान सुनिष्चित करना है।