

A

SHRI ISHAR ALLOY STEELS LTD.

v.

JAYASWALS NECO LTD.

FEBRUARY 22, 2001

B

[K.T. THOMAS, R.P. SETHI AND B.N. AGRAWAL, JJ.]

Negotiable Instruments Act, 1881 : Section 138

C

Cheque—Dishonour of—Presentation—Within period of validity—At payee's or drawer's bank—Criminal liability—Cheque presented to payee's bank returned unpaid—Cheque again presented to same bank within 6 months but reached drawer's bank after 6 months from the date it was drawn—Complaint filed before magistrate—Notice issued—On Revision application, Sessions court held no offence made out as the cheque was presented after 6 months—However, High Court held that offence was made out as the cheque was presented to payee's bank within 6 months—Correctness of—Held : To attract criminal liability cheque has to be presented to drawer's bank within 6 months from the date it is drawn either personally or through collecting bank—As the cheque was not presented to drawer's bank within statutory period of 6 months criminal court has no jurisdiction to issue process against accused.

D

E

"A bank" and "the bank"—Distinction between—Explained.

Words and Phrases :

F

"A banker" and "the bank"—Meaning of—In the context of S. 138 of the Negotiable Instruments Act, 1881.

G

The respondent presented a cheque issued by the appellant to the respondent's bank, which was returned unpaid. The respondent again presented the cheque to its bank within six months from the date it was drawn. But the cheque reached the drawer's bank after six months from the date it was drawn. The cheque was again returned unpaid.

H

Thereafter, the respondent filed a complaint before the Judicial Magistrate under Section 138 of the Negotiable Instruments Act, 1881. The appellant filed a revision before the Sessions Court contending that no offence was made out as the cheque was presented for payment beyond the period of six months as prescribed under proviso (a) to Section 138.

The Sessions Court allowed the revision. The High Court allowed the respondent's revision by holding that the cheque could be presented either in the payee's bank or the drawer's bank within six months from the date it was drawn. Hence this appeal.

Allowing the appeal, the Court

HELD : 1. The use of the words "a bank" and "the bank" in Section 138 of the Negotiable Instruments Act, 1881 is an indicator of the intention of the Legislature. The former is an indirect article and the latter is pre-fixed by a direct article. If the Legislature intended to have the same meaning for "a bank" and "the bank", there was no cause or occasion for mentioning it distinctly and differently by using two different articles. It is worth noticing that the word "banker" in Section 3 of the Act is pre-fixed by the indefinite article "a" and the word "bank" where the cheque is intended to be presented under Section 138 is pre-fixed by the definite article "the". The same Section permits a person to issue a cheque on an account maintained by him with "a bank" and makes him liable for criminal prosecution if it is returned by "the bank" meaning thereby where the person issuing the cheque has an account. "The" is the word used before nouns, with a specifying or particularising effect as opposed to the indefinite or generalising force of "a" or "an". It determines what particular thing is meant : that is, what particular thing one has to assume to be meant. "The" is always mentioned to denote a particular thing or a person. "The" would, therefore, refer implicitly to a specified bank and not any bank. "The bank" referred to in Clause (a) to the proviso to Section 138 of the Act would mean the drawer's bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued. [41-D-H]

2.1. It, however, does not mean that the cheque is always to be presented to the drawer's bank on which the cheque is issued. The payee of the cheque has the option to present the cheque in any bank including the collecting bank where he has his account but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the *drawer's* or *payee's* bank on which the cheque is drawn within the period of six months from the date on which it is shown to have been issued. [42-A-B]

2.2. The non-presentation of the cheque to the drawer's bank within

A the period specified in Section 138 of the Act would absolve the person issuing the cheque of his criminal liability under Section 138, who shall otherwise may be liable to pay the cheque amount to the payee in a civil action initiated under the law. A combined reading of Sections 3, 72 and 138 of the Act leaves no doubt that the law mandates the cheque to be presented at the bank on which it is drawn if the drawer is to be held criminally liable. Such presentation is necessarily to be made within six months at the bank on which the cheque is drawn, whether presented personally or through another bank, namely, the collecting bank of the payee. [42-C-D]

C *Om Prakash v. Gurcharan Singh*, (1997) 3 Crimes 433 (P & H) and *Arunbhai Nilkantharai Nanavati v. Jayaben Prahladbhai through her Power of Attorney*, (1999) 3 Crimes 252 (Guj.), approved.

A.B.K. Publications Ltd. v. Tamil Nadu Newsprint & Papers Ltd., (1999) 3 Crimes 97 (Mad.), overruled.

D 3. Admittedly, as the cheque was not presented before the drawer's bank within the statutory period of six months, criminal court had no jurisdiction to issue the process against the appellant.

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 219 of 2001.

From the Judgment and Order dated 6.7.2000 of the Madhya Pradesh High Court in CrI.R. No. 1486 of 1999.

A.K. Chitale, Niraj Sharma and Ms. Shilpa Chitale for the Appellant.

F Rana Mukherjee, N. Dubey and Ms. Indra Sawhney for the Respondent.

The Judgment of the Court was delivered by

SETHI, J. Leave granted.

G (a) What is meant by, "the bank" as mentioned in Clause (a) of the proviso to Section 138 of the Negotiable Instruments Act, 1881?

H (b) Does such bank mean the bank of the drawer of the cheque or covers within its ambit any bank including the collecting bank of the Payee of the cheque?

(c) To which bank the cheque is to be presented for the purposes of attracting the penal provisions of Section 138 of the Act?, A

are the questions to be determined by this Court in this appeal.

Punjab and Haryana High Court in the case of *Om Prakash v. Gurcharan Singh*, [1997] 3 Crimes 433 and Gujarat High Court in *Arunbhai Nilkantharai Nanavati v. Jayaben Prahladbhai through Her Power of Attorney & Anr.*, (1999) 3 Crimes 252, have held that a cheque must be presented to the bank on which it is drawn within six months from the date of issue of the cheque. However, Madras High Court in *A.B.K. Publications Ltd. & Ors. v. Tamil Nadu Newsprint & Papers Ltd.*, (1999) 3 Crimes 97, has taken the view that cheque can be presented either in the payee's bank or in the drawer's bank and the date of presentation in respective banks will be reckoned for calculating period of six months from the date it was drawn. B C

In the present case the High Court of Madhya Pradesh has endorsed the view of Madras High Court and disagreed with the views of Punjab and Haryana and Gujarat High Courts. D

The admitted facts of the case are that the appellant issued Cheque No.2477086 dated 21st July, 1997 for Rs.10 lakhs drawn on the State Bank of Indore, Industrial Estate Branch, Indore in favour of the respondent. The respondent presented the cheque for payment on 26th September, 1997 which was returned unpaid. Again on 20th January, 1998, the respondent presented the cheque to its bank i.e. State Bank of India at Raipur. The cheque reached the drawer bank on 24th January, 1998, admittedly after six months from the date it became payable. The cheque was returned unpaid by the bank of the respondent on 3.2.1998. A notice as required under proviso (b) of Section 138 of the Negotiable Instruments Act was issued on 10.2.1998 which was received by the appellant on 16.2.1998. A criminal complaint under Section 138 of the Negotiable Instruments Act was filed in the Court of Judicial Magistrate, First Class, Raipur against the appellant in which notice was issued for appearing in the court on 23rd September, 1998. The appellant filed Criminal Revision No.190 of 1998 in the Court of Sessions Judge, Raipur contending that as the cheque was presented for payment beyond the period of six months as prescribed under Proviso (a) to Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act"), no offence was made out, to be taken cognizance of. The revision was allowed by the Sessions Court on 3rd July, 1999. The respondent filed a further revision in the High Court E F G H

A which was allowed vide the order impugned holding, as noticed earlier, that the cheque can be presented within the six months before the drawer's (payer's) bank or it can be presented before the drawer's as well as the payee's bank.

B Before adverting to the various provisions of law as applicable in the case, it has to be kept in mind that the law relating to Negotiable Instruments is the law of the commercial world which was enacted to facilitate the activities in trade and commerce making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another. In the absence of such instruments, the trade and commerce activities were likely to be adversely affected as it was not practicable for the trading community to carry on with it the bulk of the currency in force. The introduction of negotiable instruments owes its origin to the bartering system prevalent in the primitive society. The negotiable instruments are, in fact, the instruments of credit being convertible on account of the legality of being negotiated and thus easily passable from one hand to another. The source of Indian law relating to such instruments is admittedly the English Common Law. The main object of the Act is to legalise the system by which instruments contemplated by it could pass from hand to hand by negotiation like any other goods. The purpose of the Act was to present an orderly and authoritative statement of the leading rules of law relating to the negotiable instruments. The Act intends to legalise the system under which claims upon mercantile instruments could be equated with ordinary goods passing from hand to hand. To achieve the objective of the Act, the Legislature in its wisdom thought it proper to make provision in the Act for conferring such privileges to the mercantile instruments contemplated under it and provide special procedure in case the obligation under the instrument was not discharged. It has, always to be kept in mind that Section 138 of the Act creates an offence and the law relating to the penal provisions has to be interpreted strictly so that no-one can ingeniously or insidiously or guilefully or strategically be prosecuted.

G It has further to be noticed that to make an offence under Section 138 of the Act, it is mandatory that the cheque is 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. It is the cheque drawn which has to be presented to "the bank" within the period specified therein. When a post-dated cheque is written or drawn, it is only a bill of exchange. The post-dated cheque become a cheque under the Act on the date which is written on the

said cheque and the six months period has to be reckoned, for the purposes of Section 138 of the Act, from the said date.

Section 138 provides that 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 punishable with imprisonment as prescribed therein subject to the conditions mentioned in clauses (a), (b) and (c) of the proviso. Section 3 of the Act defines the "banker" to include any person acting as a banker and any post office saving bank. Section 72 of the Act provides that a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relations between the drawer and his banker has been altered to the prejudice of the drawer. The use of the words "a bank" and "the bank" in the Section is indicator of the intention of the Legislature. The former is indirect article and the latter is pre-fixed by direct article. If the Legislature intended to have the same meanings for "a bank" and "the bank", there was no cause or occasion for mentioning it distinctly and differently by using two different articles. It is worth noticing that the word "banker" in Section 3 of the Act is pre-fixed by the indefinite article "a" and the word "bank" where the cheque is intended to be presented under Section 138 is pre-fixed by the definite article "the". The same Section permits a person to issue a cheque on an account maintained by him with "a bank" and makes him liable for criminal prosecution if it is returned by "the bank" unpaid. The payment of the cheque is contemplated by "the bank" meaning thereby where the person issuing the cheque has an account. "The" is the word used before nouns, with a specifying or particularising effect as opposed to the indefinite or generalising force of "a" or "an". It determines what particular thing is meant; that is, what particular thing we are to assume to be meant. "The" is always mentioned to denote particular thing or a person. "The" would, therefore, refer implicitly to a specified bank and not any bank. "The bank" referred to in clause (a) to the proviso to Section 138 of the Act would mean the drawee-bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued.

A It, however, does not mean that the cheque is always to be presented to the drawer's bank on which the cheque is issued. The payee of the cheque has the option to present the cheque in any bank including the collecting bank where he has his account but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the drawee or payee bank on which the cheque is drawn within the period of six months from the date on which it is shown to have been issued. In other words a cheque issued by (A) in favour of (B) drawn in a bank named (C) where the drawer has an account can be presented by the payee to the bank upon which it is drawn i.e. (C) bank within a period of six months or present it to any other bank for collection of the cheque amount provided such other bank including the collecting bank presents the cheque for collection to the (C) bank. The non presentation of the cheque to the drawee-bank within the period specified in the Section would absolve the person issuing the cheque of his criminal liability under Section 138 of the Act, who shall otherwise may be liable to pay the cheque amount to the payee in a civil action initiated under the law. A combined reading of Sections 3, 72 and 138 of the Act would leave no doubt in our mind that the law mandates the cheque to be presented at the bank on which it is drawn if the drawer is to be held criminally liable. Such presentation is necessarily to be made within six months at the bank on which the cheque is drawn, whether presented personally or through another bank, namely, the collecting bank of the payee.

E We have perused the judgments of the Punjab & Haryana, Gujarat and Madras High Courts and their conflicting views and are of the opinion that the Madras High Court has not correctly interpreted the provisions of law in this behalf.

F As, admittedly, in this case the cheque was not presented before the drawer's bank within the statutory period of six months, the criminal court had no jurisdiction to issue the process against the appellant. The impugned judgment of the High Court being contrary to law is thus not sustainable. The appeal is accordingly allowed and the impugned judgment is set aside.

G V.S.S.

Appeal allowed.