

A VEERA EXPORTS
v.
T. KALAVATHY
NOVEMBER 2, 2001

B [K.T. THOMAS AND S.N. VARIAVA, JJ.]

Negotiable Instruments Act, 1881 :

C *Section 87—Material alteration—Effect of—Negotiable instrument—Revalidation of—Held: It is always open to a drawer to voluntarily revalidate a negotiable instrument, including a cheque—After such alteration drawer cannot contend that the cheque has become void as there is material alteration thereto—Even payee of a cheque can make alteration with the consent of the drawer thereof—Whether the alteration is made by the drawer himself or made with his consent is a question of fact.*

D The respondent had issued to the appellant several cheques bearing various dates but these cheques, when presented for payment, were dishonoured. The fact of dishonour was brought to the notice of the respondent and she changed the date of the cheques. But the cheques were once again dishonoured. The appellant then filed a complaint under Section 138 of the Negotiable Instruments Act, 1881. The respondent contended that she had been forced to change the dates against her will.

E High Court quashed the complaint on the ground that the validity period of a cheque was only 6 months and that a cheque, which had become invalid because of the expiry of the stipulated period could not be made valid by alteration of dates. Hence this appeal.

F Disposing the appeal, the Court

G HELD : 1.1. There is no provision in the Negotiable Instruments Act, 1881 or in any other law, which stipulates that a drawer of a negotiable instrument cannot revalidate it. It is always open to a drawer to voluntarily revalidate a negotiable instrument, including a cheque. [10-F]

H 2. The first paragraph of Section 87 of the Act makes it clear that the party who consents to the alteration as well as the party who made the alteration are disentitled to complain against such alteration, e.g. if the

drawer of the cheque himself altered the cheque for validating or revalidating the same instrument he cannot take advantage of it later by saying that the cheque became void as there is material alteration. Further, even if the payee or the holder of the cheque made the alteration with the consent of the drawer thereof, such alteration also cannot be used as a ground to resist the right of the payee or the holder thereof. It is always a question of fact whether the alteration was made by the drawer himself or whether it was made with the consent of the drawer. It requires evidence to prove the aforesaid question whenever it is disputed. This is a fact which will have to be established by evidence at the trial. Thus at this stage the High Court could not have quashed the complaint. [11-B-C-D; F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1110-1111 of 2001.

From the Judgment and Order dated 24.11.2000 of the Madras High Court in CrI. O.P. No. 21681 of 1998.

R. Sudhinder and Rajesh Kumar for the Appellant.

K. Shivraj Choudhary and Dr. R. Prakash for the Respondent.

The Judgment of the Court was delivered by

S.N. VARIAVA, J. Leave granted.

Heard parties.

These appeals are against the Judgement of a single Judge of the Madras High Court by which the criminal proceedings launched by the appellant under Section 138 of the Negotiable Instruments Act have been quashed.

Briefly stated the facts are as follows:

The Respondent had issued to the Appellant 8 cheques, bearing various dates from 9th April, 1995 to 30th April, 1995, for a sum totalling Rs. 4 lacs. The cheques were presented for payment on 15th May, 1995 but were dishonoured. It is the case of the Appellant that the fact of dishonour was brought to the notice of the Respondent and that the Respondent then requested for more time to pay. The Appellants claim that they granted her more time to pay. The

A Appellants claim that as the Respondent still could not pay the amounts, in January 1996, she changed the date of the cheques from 1995 to 1996. The Appellants claim that the Respondent also made the necessary endorsement on the cheques at that time. The Appellant's claim that the Respondent then requested the Appellant to present the cheques after a period of three months.

B The cheques were again presented on 18th July, 1996 and were dishonoured. A legal notice dated 8th August, 1996 was served upon the Respondent. The Respondent, by her reply dated 23rd August, 1996, alleged that she had been forced to change the dates against her will. She also took up some other contentions. The Appellant then filed a complaint under Section 138 of the
C Negotiable Instruments Act.

The Respondent thereafter filed a petition in the High Court of Madras to quash the complaint. By the impugned order dated 24th November, 2000, the High Court has quashed the complaint. Hence this Appeal.

D In the impugned judgment it has been held that the defence that the alteration in the date was not made voluntarily was a question of fact which would not constitute a ground for quashing the complaint. However, after so holding correctly, the Court goes on to state that the validity period of a cheques is only 6 months. It was held that the validity period of all the 8 cheques had already expired by October, 1995, and then held that once the validity period
E was over, the cheques could not be re-validated by altering the dates so as to give fresh life to the cheques for another 6 months. It is held that in law, a cheque which has become invalid because of the expiry of the stipulated period could not be made valid by alteration of dates.

F In our view this reasoning is entirely fallacious. There is no provision in the Negotiable Instruments Act or in any other law which stipulates that a drawer of a negotiable instrument cannot re-validate it. It is always open to a drawer to voluntarily revalidate a negotiable instrument, including a cheque.

G The High Court has also placed reliance on Section 87 of the Negotiable Instruments Act, which reads as follows :

“87. *Effect of material alteration* - Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention
H

of the original parties;

Alteration by indorsee - Any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of Sections 20, 49, 86 and 125."

The first paragraph of Section 87 makes it clear that the party who consents to the alteration as well as the party who made the alteration are disentitled to complain against such alteration, e.g. if the drawer of the cheque himself altered the cheque for validating or revalidating the same instrument he cannot take advantage of it later by saying that the cheque became void as there is material alteration thereto. Further, even if the payee or the holder of the cheque made the alteration with the consent of the drawer thereof, such alteration also cannot be used as a ground to resist the right of the payee or the holder thereof. It is always a question of fact whether the alteration was made by the drawer himself or whether it was made with the consent of the drawer. It requires evidence to prove the aforesaid question whenever it is disputed.

It is held by the High Court that a change of date is a material alteration which affected the interests of the Respondent. It is held that the Respondent not being a willing party to the said alteration, the cheques were void as contemplated by Section 87 of the Negotiable Instruments Act. At this stage there is no basis for arriving at such a conclusion. In the earlier part of the impugned Judgment it has been correctly held that this is a question of fact. This is a fact which will have to be established on evidence during trial. At this stage the High Court could not have quashed the complaint merely on the basis of an assertion in the reply.

Under the circumstances the impugned order is set aside. The Petition filed by the Respondent stands dismissed. The Judicial Magistrate II, Karur shall now proceed with the complaint in accordance with law.

The Appeals stand disposed of accordingly. There shall be no order as to costs.

V.S.S.

Appeals disposed of.