

MSR LEATHERS

v.

S. PALANIAPPAN & ANR.

(Criminal Appeal Nos. 261-264 of 2002)

SEPTEMBER 26, 2012

[R.M. LODHA, T.S. THAKUR AND ANIL R. DAVE, JJ.]

Negotiable Instruments Act, 1881 - s. 138 - Dishonour of cheque - Prosecution based upon second or successive dishonour - When no prosecution initiated on first dishonour - Whether permissible - Held: In view of s. 138 and the object underlying therein, the prosecution based on second or successive default in payment of cheque is permissible even when no prosecution was initiated pursuant to first default - Even the legislative intention was not to impose such restriction - So long as the cheque remains unpaid within its validity period and condition precedent for prosecution in terms of proviso to s. 138 are satisfied, cheque holder's right to prosecute the drawer remains valid and exercisable - The benefit of further opportunity to the drawer by reason of a fresh presentation of cheque, cannot help the defaulter to get a complete absolution from prosecution - Interpretation of Statutes.

Interpretation of Statutes - Purposive interpretation - The court should adopt an interpretation which promotes and advances the object sought to be achieved by the legislation, in preference to an interpretation which defeats such object.

Words and Phrases:

'Absolution' - Meaning of.

'Cause of Action' - Meaning of, in the context of s. 138 of Negotiable Instruments Act, 1881.

A A Division Bench of this Court referred the question to the three Judges Bench 'Whether the prosecution u/ s. 138 of Negotiable Instruments Act, 1881 based upon second or successive dishonour of cheque is permissible, if the holder of the cheque had not initiated prosecution when the cheque was dishonoured for the first time.

Answering the reference, the Court

C HELD: 1. 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. [Para 33] [192-G]

D 2. Presentation of the cheque and dishonour thereof within the period of its validity or a period of six months is just one of the three requirements that constitutes 'cause of action' within the meaning of Sections 138 and 142(b) of the Act, an expression that is more commonly used in civil law than in penal statutes. For a dishonour to culminate into the commission of an offence of which a court may take cognizance, there are two other requirements, namely, (a) service of a notice upon the drawer of the cheque to make payment of the amount covered by the cheque and (b) failure of the drawer to make any such payment within the stipulated period of 15 days of the receipt of such a notice. It is only when the said two conditions are superadded to the dishonour of the cheque that the holder/payee of the cheque acquires the right to institute proceedings for prosecution under Section 138 of the Act, which right remains legally enforceable for a period of 30 days counted from the date on which the cause of action accrued to him. There is, however, nothing in the proviso to Section 138 or Section 142 for that matter, to oblige the holder/payee of a dishonoured cheque to necessarily file a complaint even

when he has acquired an indefeasible right to do so. The fact that an offence is complete need not necessarily lead to launch of prosecution especially when the offence is not a cognizable one. The complainant may, even when he has the immediate right to institute criminal proceedings against the drawer of the cheque, either at the request of the holder/payee of the cheque or on his own volition, refrain from instituting the proceedings based on the cause of action that has accrued to him. Such a decision to defer prosecution may be impelled by several considerations. [Para 14] [181-C-H; 182-A]

3. The expression 'cause of action' is more commonly and easily understood in the realm of civil laws. The expression is not defined anywhere in CPC to which it generally bears relevance but has been universally understood to mean the bundle of facts which the plaintiff must prove in order to entitle him to succeed in the suit. [Para 18] [184-A]

State of Madras v. C.P. Agencies AIR 1960 SC 1309; *Rajasthan High Court Advocates Association v. U.O.I. and Ors.* AIR 2001 SC 416: 2000 (5) Suppl. SCR 743 ; *Mohamed Khaleel Khan v. Mahaboob Ali Mia* AIR 1949 PC 78- referred to.

4. A careful reading of Sections 138 and 142, makes it abundantly clear that the cause of action to institute a complaint comprises the three different factual prerequisites for the institution of a complaint. None of these prerequisites is in itself sufficient to constitute a complete cause of action for an offence under Section 138. The expression 'cause of action' appearing in Section 142 (b) of the Act cannot therefore be understood to be limited to any given requirement out of the three requirements that are mandatory for launching a prosecution on the basis of a dishonoured cheque. Having said that, every time a cheque is presented in the

A manner and within the time stipulated under the proviso
to Section 138 followed by a notice within the meaning
of clause (b) of proviso to Section 138 and the drawer
fails to make the payment of the amount within the
stipulated period of fifteen days after the date of receipt
B of such notice, a cause of action accrues to the holder
of the cheque to institute proceedings for prosecution of
the drawer. [Paras 19 and 20] [184-D-H; 185-A-B]

5. Simply because the prosecution for an offence
under Section 138 must on the language of Section 142
C be instituted within one month from the date of the failure
of the drawer to make the payment does not militate
against the accrual of multiple causes of action to the
holder of the cheque upon failure of the drawer to make
the payment of the cheque amount. In the absence of any
D juristic principle on which such failure to prosecute on
the basis of the first default in payment should result in
forfeiture, it is difficult to hold that the payee would lose
his right to institute such proceedings on a subsequent
default that satisfies all the three requirements of Section
E 138. [Para 21] [185-D-E]

6. The right of the holder to present the cheque for
encashment carries with it a corresponding obligation on
the part of the drawer to ensure that the cheque drawn
F by him is honoured by the bank who stands in the
capacity of an agent of the drawer vis-à-vis the holder of
the cheque. There is nothing in the proviso to s. 138 to
even remotely suggest that clause (a) would have no
application to a cheque presented for the second time if
the same has already been dishonoured once. Indeed if
G the legislative intent was to restrict prosecution only to
cases arising out of the first dishonour of a cheque
nothing prevented it from stipulating so in clause (a)
itself. In the absence of any such provision, a dishonour
whether based on a second or any successive
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presentation of a cheque for encashment would be a dishonour within the meaning of Section 138 and clause (a) to proviso thereof. [Para 22] [185-G-H; 186-A-C] A

7. So long as the cheque remains unpaid, it is the continuing obligation of the drawer to make good the same by either arranging the funds in the account on which the cheque is drawn or liquidating the liability otherwise. It is true that a dishonour of the cheque can be made a basis for prosecution of the offender but once, but that is far from saying that the holder of the cheque does not have the discretion to choose out of several such defaults, one default, on which to launch such a prosecution. The omission or the failure of the holder to institute prosecution does not, therefore, give any immunity to the drawer so long as the cheque is dishonoured within its validity period and the conditions precedent for prosecution in terms of the proviso to Section 138 are satisfied. [Para 22] [186-D-F] B C D

8. There is nothing in Section 142(b) to suggest that prosecution based on subsequent or successive dishonour is impermissible. So long as the cheque is valid and so long as it is dishonoured upon presentation to the bank, the holder's right to prosecute the drawer for the default committed by him remains valid and exercisable. By reason of a fresh presentation of a cheque followed by a fresh notice in terms of Section 138, proviso (b), the drawer gets an extended period to make the payment and thereby benefits in terms of further opportunity to pay to avoid prosecution. Such fresh opportunity cannot help the defaulter on any juristic principle, to get a complete absolution from prosecution. [Para 23] [186-G; 187-A-D] E F G

9. The proviso to s. 142(b) permits the payee to institute prosecution proceedings against a defaulting drawer even after the expiry of the period of one month. H

A If a failure of the payee to file a complaint within a period of one month from the date of expiry of the period of 15 days allowed for this purpose was to result in 'absolution', the proviso would not have been added to negate that consequence. The statute as it exists today, B therefore, does not provide for 'absolution' simply because the period of 30 days has expired or the payee has for some other reasons deferred the filing of the complaint against the defaulter. [Para 26] [188-F-H]

C *Subodh S. Salaskar v. Jayprakash M. Shah and Anr.* (2008) 13 SCC 689: 2008 (11) SCR 681 - referred to.

10. The object underlying Section 138 of the Act is to promote and inculcate faith in the efficacy of banking system and its operations, giving credibility to Negotiable D Instruments in business transactions and to create an atmosphere of faith and reliance by discouraging people from dishonouring their commitments which are implicit when they pay their dues through cheques. The provision was intended to punish those unscrupulous E persons who issued cheques for discharging their liabilities without really intending to honour the promise that goes with the drawing up of such a negotiable instrument. It was intended to enhance the acceptability of cheques in settlement of liabilities by making the F drawer liable for penalties in case the cheque was dishonoured and to safeguard and prevent harassment of honest drawers. One of the salutary principles of interpretation of statutes is to adopt an interpretation which promotes and advances the object sought to be G achieved by the legislation, in preference to an interpretation which defeats such object. [Para 27] [189-A-E]

H *New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar* AIR 1963 SC 1207: 1963 Suppl. SCR 459; *Deputy*

Custodian, Evacuee Property v. Official Receiver AIR 1965 SC 951; 1965 SCR 220 ; *Nathi Devi v. Radha Devi* (2005) 2 SCC 271; 2004 (6) Suppl. SCR 1141; *S.P. Jain v. Krishan Mohan Gupta* (1987) 1 SCC 191; 1987 (1) SCR 411 - relied on.

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Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd. (2006) 3 SCC 658; 2006 (2) SCR 595 ; *C.C. Alavi Haji v. Palapetty Muhammed and Anr.* (2007) 6 SCC 555; 2007 (7) SCR 326 ; *Damodar S. Prabhu v. Sayed Babulal H.* (2010) 5 SCC 663; 2010 (5) SCR 678 - referred to.

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11. Applying the purposive rule of interpretation and the provisions of Section 138, it can be held 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 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 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. [Para 31] [191-C-G]

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12. An interpretation which curtails the right of the parties to negotiate a possible settlement without

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- A prejudice to the right of holder to institute proceedings within the outer period of limitation stipulated by law should be avoided there is no reason why parties should, by a process of interpretation, be forced to launch complaints where they can or may like to defer such
- B action for good and valid reasons. 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.
- C 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
- D resort to proceedings in the courts of law. [Para 32] [192-B-D]

**Sadanandan Bhadran v. Madhavan Sunil Kumar* (1998) 6 SCC 514: 1998 (1) Suppl. SCR 178 - overruled.

- E *Kumaresan v. Ameerappa* (1991) 1 Ker L.T. 893; *S.K.D. Lakshmanan Fireworks Industries v. K.V. Sivarama Krishnan* (1995) Cri L J 1384 (Ker).; *Sil Import, USA v. Exim Aides Silk Exporters, Bangalore* (1999) 4 SCC 567: 1999 (2) SCR 958 ; *Uniplas India Ltd. and Ors. v. State (Govt. of NCT Delhi) and Anr.* (2001) 6 SCC 8:2001 (3) SCR 985 ; *Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd. and Anr.* (2001) 6 SCC 463: 2001 (1) SCR 461 ; *Prem Chand Vijay Kumar v. Yashpal Singh and Anr.* (2005) 4 SCC 417: 2005 (3) SCR 1029 ; *S.L. Constructions and Anr. v. Alapati Srinivasa Rao and Anr.* (2009) 1 SCC 500: 2008 (15) SCR 51; *Tameshwar Vaishnav v. Ramvishal Gupta* (2010) 2 SCC 329:2010 (1) SCR 204 - referred to.
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Case Law Reference:

- H (1991) 1 Ker L.T. 893 Referred to Para 2

(1995) Cri L J 1384 (Ker)	Referred to	Para 5	A
1999 (2) SCR 958	Referred to	Para 16	
2001 (3) SCR 985	Referred to	Para 16	
2001 (1) SCR 461	Referred to	Para 16	B
2005 (3) SCR 1029	Referred to	Para 16	
2008 (15) SCR 51	Referred to	Para 16	
2010 (1) SCR 204	Referred to	Para 16	
AIR 1960 SC 1309	Referred to	Para 18	C
2000 (5) Suppl. SCR 743	Referred to	Para 18	
AIR 1949 PC 78	Referred to	Para 18	
2008 (11) SCR 681	Referred to	Para 25	D
2006 (2) SCR 595	Referred to	Para 27	
2007 (7) SCR 326	Referred to	Para 27	
2010 (5) SCR 678	Referred to	Para 27	E
1963 Suppl. SCR 459	Relied on	Para 27	
1965 SCR 220	Relied on	Para 28	
2004 (6) Suppl.SCR 1141	Relied on	Para 29	F
1987 (1) SCR 411	Relied on	Para 30	
1998 (1) Suppl. SCR 178	Overruled	Para 32	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 261-264 of 2002. G

From the Judgment & Order dated 19.1.2001 of the High
Court of Judicature at Madras in Criminal Revision Petition No.
618, 624, 664, 665 of 2000.

A Dr. A. Francis Julian, Danish Zubair Khan (for Arputham, Aruna & Co) for the Appellant.

K.K. Mani for the Respondents.

B The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. In *Sadanandan Bhadran v. Madhavan Sunil Kumar* (1998) 6 SCC 514, this Court was dealing with a case under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as 'the Act') in which the complainant had, after dishonour of a cheque issued in his favour, taken steps to serve upon the accused-drawer of the cheque a notice under clause (b) of proviso to Section 138 of the Act. No complaint was, however, filed by the complainant despite 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 a second time for want of sufficient funds. Another notice was served on the drawer of the cheque to arrange payment within fifteen days of receipt of said notice. Only after failure of drawer to do so did the payee file a complaint against the former under Section 138 of the Act.

2. After entering appearance, the drawer filed an application seeking discharge on the ground that the payee could not 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. The Magistrate accepted that contention relying upon a Division Bench decision of Kerala High Court in *Kumaresan v. Ameerappa* (1991) 1 Ker L.T. 893 and dismissed the complaint. The order passed by the Magistrate was then questioned before the High Court of Kerala who relying upon *Kumaresan's* case (supra) upheld the order passed by the Magistrate. The matter was eventually brought up to this Court by special leave. This Court formulated the following question for determination:

“Whether payee or holder of cheque can initiate proceeding of prosecution under Section 138 of Negotiable Instrument Act, 1881 for the second time if he has not initiated any action on earlier cause of action?”

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3. Answering the question in the negative this Court held that a combined reading of Sections 138 and 142 of the Act left no room for doubt that cause of action under Section 142(b) can arise only once. The conclusion observed by the court is supported not only by Sections 138 and 142 but also by the fact that the dishonour of cheque gives rise to the commission of offence only on the failure to pay money when a notice is served upon the drawer in accordance with clause (b) of the proviso to Section 138. The Court further held that if the concept of successive causes of action were to be accepted the same would make the limitation under Section 142(b) otiose. The Court observed:

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“7. Besides the language of Sections 138 and 142 which clearly postulates only one cause of action, there are other formidable impediments which negate the concept of successive causes of action. One of them is that for dishonour of one cheque, there can be only one offence and such offence is committed by the drawer immediately on his failure to make the payment within fifteen days of the receipt of the notice served in accordance with clause (b) of the proviso to Section 138. That necessarily means that for similar failure after service of fresh notice on subsequent dishonour, the drawer cannot be liable for any offence nor can the first offence be treated as non est so as to give the payee a right to file a complaint treating the second offence as the first one. At that stage, it will not be a question of waiver of the right of the payee to prosecute the drawer but of absolution of the drawer of an offence, which stands already committed by him and which cannot be committed by him again.

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8. The other impediment to the acceptance of the concept

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A of successive causes of action is that it will make the
 period of limitation under clause (c) of Section 142 otiose,
 for, a payee who failed to file his complaint within one
 month and thereby forfeited his right to prosecute the
 drawer, can circumvent the above limitative clause by filing
 B a complaint on the basis of a fresh presentation of the
 cheque and its dishonour. Since in the interpretation of
 statutes, the court always presumes that the legislature
 inserted every part thereof for a purpose and the legislative
 intention is that every part should have effect, the above
 C conclusion cannot be drawn for that will make the provision
 for limiting the period of making the complaint nugatory.”

4. The Court then tried to reconcile the apparently
 conflicting provisions of the Act - one enabling the payee to
 present the cheque and the other giving him opportunity to file
 D a complaint within one month and observed:

“.....Having given our anxious consideration to this
 question, we are of the opinion that the above two
 provisions can be harmonised, with the interpretation that
 E on each presentation of the cheque and its dishonour, a
 fresh right — and not cause of action — accrues in his
 favour. He may, therefore, without taking pre-emptory
 action in exercise of his such right under clause (b) of
 Section 138, go on presenting the cheque so as to enable
 F him to exercise such right at any point of time during the
 validity of the cheque. But once he gives a notice under
 clause (b) of Section 138, he forfeits such right for in case
 of failure of the drawer to pay the money within the
 stipulated time, he would be liable for offence and the
 cause of action for filing the complaint will arise. Needless
 G to say, the period of one month for filing the complaint will
 be reckoned from the day immediately following the day
 on which the period of fifteen days from the date of the
 receipt of the notice by the drawer expires.”

H 5. The Court accordingly dismissed the appeal while

affirming the decision of the Kerala High Court in *Kumaresan's* case (supra), no matter the same had been in the meantime overruled by a decision of the Full Bench of that Court in *S.K.D. Lakshmanan Fireworks Industries v. K.V. Sivarama Krishnan* (1995) Cri L J 1384 (Ker). A

6. When the present appeal first came up for hearing before a bench comprising Markandey Katju and B. Sudershan Reddy, JJ., reliance on behalf of respondents was placed upon the decision of this Court in *Sadanandan Bhadran's* case (supra) to argue that the complaint in the instant case had also been filed on the basis of the second dishonour of a cheque after the payee of the cheque had issued a notice to the drawer under clause (b) of the proviso to Section 138 of the Act based on an earlier dishonour. On the ratio of *Sadanandan Bhadran's* case (supra) such a complaint was not maintainable, argued the respondents. The Court, however, expressed its reservation about the correctness of the view taken in *Sadanandan Bhadran's* case (supra) especially in para 9 thereof and accordingly referred the matter to a larger Bench. That is precisely how the present appeal has come up for hearing before us. It is, therefore, evident that this Court has repeatedly followed the view taken in *Sadanandan Bhadran's* case (supra). But a careful reading of these decisions reveals that in these subsequent decisions there had been no addition to the ratio underlying the conclusion in *Sadanandan Bhadran's* case (supra). B
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7. Before advertng to the submissions that were urged at the Bar we may briefly summarise the facts in the backdrop of which the issue arises for our determination. Four cheques for a total sum of rupees ten lakhs were issued by the respondent-company on 14th August, 1996 in favour of the appellant which were presented to the bank for collection on 21st November, 1996. The cheques were dishonoured in terms of memo dated 22nd November, 1996 for insufficiency of funds. A notice under clause (b) of proviso to Section 138 was then issued by the appellant to the respondent on 8th January, 1997 demanding G
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A payment of the amount covered by the cheques. Despite receipt of the notice by the respondent the payment was not arranged. The appellant's case is that the respondent assured the appellant that the funds necessary for the encashment of the cheques shall be made available by the respondent, for which purpose the cheques could be presented again to the bank concerned. The cheques were accordingly presented for the second time to the bank on 21st January, 1997 and were dishonoured for a second time in terms of a memo dated 22nd January, 1997 once again on the ground of insufficiency of funds. A statutory notice issued by the appellant under clause (b) of proviso to Section 138 of the Act on 28th January, 1997 called upon the respondent-drawer of the cheques to arrange payment of the amount within 15 days. Despite receipt of the said notice on 3rd February, 1997, no payment was arranged which led to the filing of Complaint Case No.1556-1557/1997 by the appellant before the II Metropolitan Magistrate, Madras for the offence punishable under Section 138 read with Section 142 of the Act. The Magistrate took cognizance and issued summons to the respondents in response where to the respondents entered appearance and sought discharge primarily on the ground that the complaint had not been filed within 30 days of the expiry of the notice based on the first dishonour of the cheque. It was also alleged that the statutory notice which formed the basis of the complaint had not been served upon the accused persons. The Magistrate upon consideration dismissed the applications for discharge which order was then assailed by the respondents before the High Court of Madras in Criminal Appeal Nos. 618, 624, 664, 665/2000.

G 8. The High Court has, by the order impugned in this appeal, allowed the revision and quashed the orders passed by the Magistrate relying upon the decision of this Court in *Sadanandan Bhadran's* case (supra) according to which a complaint based on a second or successive dishonour of the cheque was not maintainable if no complaint based on an

earlier dishonour, followed by the statutory notice issued on the basis thereof, had been filed. A

9. Section 138 of the Negotiable Instruments Act, 1881, constituting Chapter XVII of the Act which was introduced by Act 66 of 1988, inter alia, provides: B

“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 provision of this Act, be punished with imprisonment for a term which may extend to two year, or with fine which may extend to twice the amount of the cheque, or with both” C D E

10. Proviso to Section 138, however, is all important and stipulates three distinct conditions precedent, which must be satisfied before the dishonour of a cheque can constitute an offence and become punishable. The first condition is that the cheque ought to have 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. The second condition is that the payee or the holder in due course of the cheque, as the case may be, ought to make 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. The third condition is that the drawer of such a cheque should have failed to make payment of the said amount of money to the payee or as the case may be, to F G H

- A the holder in due course of the cheque within fifteen days of the receipt of the said notice. It is only upon the satisfaction of all the three conditions mentioned above and enumerated under the proviso to Section 138 as clauses (a), (b) and (c) thereof that an offence under Section 138 can be said to have been
- B committed by the person issuing the cheque.

11. Section 142 of the Negotiable Instruments Act governs taking of cognizance of the offence and starts with a non-obstante clause. It provides that no court shall take cognizance of any offence punishable under Section 138 except upon a
- C complaint, in writing, made by the payee or, as the case may be, by the holder in due course and 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. In terms of sub-
- D section (c) to Section 142, no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class is competent to try any offence punishable under Section 138.

12. A careful reading of the above provisions makes it
- E manifest that a complaint under Section 138 can be filed only after cause of action to do so has accrued in terms of clause (c) of proviso to Section 138 which, as noticed earlier, happens no sooner than when the drawer of the cheque fails to make the payment of the cheque amount to the payee or the holder
- F of the cheque within 15 days of the receipt of the notice required to be sent in terms of clause (b) of proviso to Section 138 of the Act.

13. What is important is that neither Section 138 nor Section 142 or any other provision contained in the Act forbids
- G 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
- H by learned counsel appearing for the parties and rightly so in

light of the judicial pronouncements on that question which are all unanimous. Even *Sadanandan Bhadran's case* (supra) 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.

14. Presentation of the cheque and dishonour thereof within the period of its validity or a period of six months is just one of the three requirements that constitutes 'cause of action' within the meaning of Sections 138 and 142(b) of the Act, an expression that is more commonly used in civil law than in penal statutes. For a dishonour to culminate into the commission of an offence of which a court may take cognizance, there are two other requirements, namely, (a) service of a notice upon the drawer of the cheque to make payment of the amount covered by the cheque and (b) failure of the drawer to make any such payment within the stipulated period of 15 days of the receipt of such a notice. It is only when the said two conditions are superadded to the dishonour of the cheque that the holder/payee of the cheque acquires the right to institute proceedings for prosecution under Section 138 of the Act, which right remains legally enforceable for a period of 30 days counted from the date on which the cause of action accrued to him. There is, however, nothing in the proviso to Section 138 or Section 142 for that matter, to oblige the holder/payee of a dishonoured cheque to necessarily file a complaint even when he has acquired an indefeasible right to do so. The fact that an offence is complete need not necessarily lead to launch of prosecution especially when the offence is not a cognizable one. It follows that the complainant may, even when he has the immediate right to institute criminal proceedings against the drawer of the cheque, either at the request of the holder/payee of the cheque or on his own volition, refrain from instituting the proceedings based on the cause of action that has accrued to him. Such a decision to defer prosecution may be impelled by

- A several considerations but more importantly it may be induced by an assurance which the drawer extends to the holder of the cheque that given some time the payment covered by the cheques would be arranged, in the process rendering a time consuming and generally expensive legal recourse unnecessary.
- B It may also be induced by a belief that a fresh presentation of the cheque may result in encashment for a variety of reasons including the vicissitudes of trade and business dealings where financial accommodation given by the parties to each other is not an unknown phenomenon. Suffice it to say that there is
- C nothing in the provisions of the Act that forbids the holder/payee of the cheque to demand by service of a fresh notice under clause (b) of proviso to Section 138 of the Act, the amount covered by the cheque, should there be a second or a successive dishonour of the cheque on its presentation.
- D 15. *Sadanandan Bhadran's* case (supra) holds that while a second or successive presentation of the cheque is legally permissible so long as such presentation is within the period of six months or the validity of the cheque whichever is earlier, the second or subsequent dishonour of the cheque would not
- E entitle the holder/payee to issue a statutory notice to the drawer nor would it entitle him to institute legal proceedings against the drawer in the event he fails to arrange the payment. The decision gives three distinct reasons why that should be so. The first and the foremost of these reasons is the use of the
- F expression "cause of action" in Section 142(b) of the Act which according to the Court has been used in a restrictive sense and must therefore be understood to mean that cause of action under Section 142(b) can arise but once. The second reason cited for the view taken in the *Sadanandan Bhadran's* case
- G (supra) is that dishonour of a cheque will lead to commission of only one offence and that the offence is complete no sooner the drawer fails to make the payment of the cheque amount within a period of 15 days of the receipt of the notice served upon him. The Court has not pressed into service the doctrine
- H of "waiver of the right to prosecute" but held that the failure of

the holder to institute proceedings would tantamount to “absolution” of the drawer of the offence committed by him. The third and the only other reason is that successive causes of action will militate against the provisions of Section 142(b) and make the said provision otiose. The Court in *Sadanandan Bhadran’s* case (supra) held that the failure of the drawer/payee to file a complaint within one month resulted in forfeiture of the complainant’s right to prosecute the drawer/payee which forfeiture cannot be circumvented by him by presenting the cheque afresh and inviting a dishonour to be followed by a fresh notice and a delayed complaint on the basis thereof.

16. With utmost respect to the Judges who decided *Sadanandan Bhadran’s* case (supra) we regret our inability to fall in line with the above line of reasoning to hold that while a cheque is presented afresh the right to prosecute the drawer, if the cheque is dishonoured, is forfeited only because the previous dishonour had not resulted in immediate prosecution of the offender even when a notice under clause (b) of proviso to Section 138 had been served upon the drawer. We are conscious of the fact that *Sadanandan Bhadran’s* case (supra) has been followed in several subsequent decisions of this Court such as in *Sil Import, USA v. Exim Aides Silk Exporters, Bangalore*, (1999) 4 SCC 567, *Uniplas India Ltd. and Ors. v. State (Govt. of NCT Delhi) and Anr.*, (2001) 6 SCC 8, *Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd. and Anr.*, (2001) 6 SCC 463, *Prem Chand Vijay Kumar v. Yashpal Singh and Anr.*, (2005) 4 SCC 417, *S.L. Constructions and Anr. v. Alapati Srinivasa Rao and Anr.*, (2009) 1 SCC 500, *Tameshwar Vaishnav v. Ramvishal Gupta*, (2010) 2 SCC 329.

17. All these decisions have without disturbing or making any addition to the rationale behind the decision in *Sadanandan Bhadran’s* case (supra) followed the conclusion drawn in the same. We, therefore, propose to deal with the three dimensions that have been highlighted in that case while holding that successive causes of action are not within the comprehension of Sections 138 and 142 of the Act.

A 18. The expression 'cause of action' is more commonly
and easily understood in the realm of civil laws. The expression
is not defined anywhere in the Code of Civil Procedure to which
it generally bears relevance but has been universally understood
to mean the bundle of facts which the plaintiff must prove in
B order to entitle him to succeed in the suit. (See *State of Madras*
v. C.P. Agencies AIR 1960 SC 1309; *Rajasthan High Court*
Advocates Association v. U.O.I. & Ors. 2001 SC 416
Mahaboob Ali AIR 1949 PC78).

C 19. Section 142 of the Negotiable Instruments Act is
perhaps the only penal provision in a statute which uses the
expression 'cause of action' in relation to the commission of
an offence or the institution of a complaint for the prosecution
of the offender. A careful reading of Sections 138 and 142, as
D noticed above, makes it abundantly clear that the cause of
action to institute a complaint comprises the three different
factual prerequisites for the institution of a complaint to which
we have already referred in the earlier part of this order. None
of these prerequisites is in itself sufficient to constitute a
complete cause of action for an offence under Section 138. For
E instance if a cheque is not presented within a period of six
months from the date on which it is drawn or within the period
of its validity, whichever is earlier, no cause of action would
accrue to the holder of the cheque even when the remaining
two requirements, namely service of a notice and failure of the
F drawer to make the payment of the cheque amount are
established on facts. So also presentation of the cheque within
the stipulated period without service of a notice in terms of
Section 138 proviso (b) would give no cause of action to the
holder to prosecute the drawer just as the failure of the drawer
G to make the payment demanded on the basis of a notice that
does not satisfy the requirements of clause (b) of proviso to
Section 138 would not constitute a complete cause of action.

H 20. The expression 'cause of action' appearing in Section
142 (b) of the Act cannot therefore be understood to be limited
to any given requirement out of the three requirements that are

mandatory for launching a prosecution on the basis of a dishonoured cheque. Having said that, every time a cheque is presented in the manner and within the time stipulated under the proviso to Section 138 followed by a notice within the meaning of clause (b) of proviso to Section 138 and the drawer fails to make the payment of the amount within the stipulated period of fifteen days after the date of receipt of such notice, a cause of action accrues to the holder of the cheque to institute proceedings for prosecution of the drawer.

21. There is, in our view, nothing either in Section 138 or Section 142 to curtail the said right of the payee, leave alone a forfeiture of the said right for no better reason than the failure of the holder of the cheque to institute prosecution against the drawer when the cause of action to do so had first arisen. Simply because the prosecution for an offence under Section 138 must on the language of Section 142 be instituted within one month from the date of the failure of the drawer to make the payment does not in our view militate against the accrual of multiple causes of action to the holder of the cheque upon failure of the drawer to make the payment of the cheque amount. In the absence of any juristic principle on which such failure to prosecute on the basis of the first default in payment should result in forfeiture, we find it difficult to hold that the payee would lose his right to institute such proceedings on a subsequent default that satisfies all the three requirements of Section 138.

22. That brings us to the question whether an offence punishable under Section 138 can be committed only once as held by this Court in *Sadanandan Bhadran's* case (*supra*). The holder of a cheque as seen earlier can present it before a bank any number of times within the period of six months or during the period of its validity, whichever is earlier. This right of the holder to present the cheque for encashment carries with it a corresponding obligation on the part of the drawer to ensure that the cheque drawn by him is honoured by the bank who stands in the capacity of an agent of the drawer vis-à-vis the holder of the cheque. If the holder of the cheque has a right, as

A indeed is in the unanimous opinion expressed in the decisions
 on the subject, there is no reason why the corresponding
 obligation of the drawer should also not continue every time the
 cheque is presented for encashment if it satisfies the
 requirements stipulated in that clause (a) to the proviso to
 B Section 138. There is nothing in that proviso to even remotely
 suggest that clause (a) would have no application to a cheque
 presented for the second time if the same has already been
 dishonoured once. Indeed if the legislative intent was to restrict
 prosecution only to cases arising out of the first dishonour of a
 C cheque nothing prevented it from stipulating so in clause (a)
 itself. In the absence of any such provision a dishonour whether
 based on a second or any successive presentation of a cheque
 for encashment would be a dishonour within the meaning of
 Section 138 and clause (a) to proviso thereof. We have,
 D therefore, no manner of doubt that so long as the cheque
 remains unpaid it is the continuing obligation of the drawer to
 make good the same by either arranging the funds in the
 account on which the cheque is drawn or liquidating the liability
 otherwise. It is true that a dishonour of the cheque can be made
 a basis for prosecution of the offender but once, but that is far
 E from saying that the holder of the cheque does not have the
 discretion to choose out of several such defaults, one default,
 on which to launch such a prosecution. The omission or the
 failure of the holder to institute prosecution does not, therefore,
 F give any immunity to the drawer so long as the cheque is
 dishonoured within its validity period and the conditions
 precedent for prosecution in terms of the proviso to Section 138
 are satisfied.

23. Coming then to the question whether there is anything
 G in Section 142(b) to suggest that prosecution based on
 subsequent or successive dishonour is impermissible, we need
 only mention that the limitation which *Sadanandan Bhadran's*
 case (supra) reads into that provision does not appear to us
 to arise. We say so because while a complaint based on a
 H default and notice to pay must be filed within a period of one

month from the date the cause of action accrues, which implies the date on which the period of 15 days granted to the drawer to arrange the payment expires, there is nothing in Section 142 to suggest that expiry of any such limitation would absolve him of his criminal liability should the cheque continue to get dishonoured by the bank on subsequent presentations. So long as the cheque is valid and so long as it is dishonoured upon presentation to the bank, the holder's right to prosecute the drawer for the default committed by him remains valid and exercisable. The argument that the holder takes advantage by not filing a prosecution against the drawer has not impressed us. By reason of a fresh presentation of a cheque followed by a fresh notice in terms of Section 138, proviso (b), the drawer gets an extended period to make the payment and thereby benefits in terms of further opportunity to pay to avoid prosecution. Such fresh opportunity cannot help the defaulter on any juristic principle, to get a complete absolution from prosecution.

24. Absolution is, at any rate, a theological concept which implies an act of forgiving the sinner of his sins upon confession. The expression has no doubt been used in some judicial pronouncements, but the same stop short of recognizing absolution as a juristic concept. It has always been used or understood in common parlance to convey "setting free from guilt" or "release from a penalty". The use of the expression "absolution" in *Sadanandan Bhadran's* case (*supra*) at any rate came at a time when proviso to Section 142(b) had not found a place on the statute book. That proviso was added by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 which read as under:

"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."

25. The Statement of Objects and Reasons appended to

A the Amendment Bill, 2002 suggests that the introduction of this proviso was recommended by the Standing Committee on Finance and other representatives so as to providediscretion to the Court to waive the period of one month, which has been prescribed for taking cognizance of a case under the Act. This
 B was so recognised judicially also by this Court in *Subodh S. Salaskar v. Jayprakash M. Shah & Anr.* (2008) 13 SCC 689 where this Court observed:

C “11. The [Negotiable Instruments] Act was amended in the year 2002 whereby additional powers have been conferred upon the court to take cognizance even after expiry of the period of limitation by conferring on it a discretion to waive the period of one month.

xx xx xx xx

D 24...The provisions of the Act being special in nature, in terms thereof the jurisdiction of the court to take cognizance of an offence under Section 138 of the Act was limited to the period of thirty days in terms of the proviso appended thereto. The Parliament only with a view to
 E obviate the aforementioned difficulties on the part of the complainant inserted proviso to Clause (b) of Section 142 of the Act in 2002. It confers a jurisdiction upon the court to condone the delay...”

F 26. The proviso referred to above now permits the payee to institute prosecution proceedings against a defaulting drawer even after the expiry of the period of one month. If a failure of the payee to file a complaint within a period of one month from the date of expiry of the period of 15 days allowed
 G for this purpose was to result in ‘absolution’, the proviso would not have been added to negate that consequence. The statute as it exists today, therefore, does not provide for ‘absolution’ simply because the period of 30 days has expired or the payee has for some other reasons deferred the filing of the complaint
 H against the defaulter.

27. It is trite that the object underlying Section 138 of the Act is to promote and inculcate faith in the efficacy of banking system and its operations, giving credibility to Negotiable Instruments in business transactions and to create an atmosphere of faith and reliance by discouraging people from dishonouring their commitments which are implicit when they pay their dues through cheques. The provision was intended to punish those unscrupulous persons who issued cheques for discharging their liabilities without really intending to honour the promise that goes with the drawing up of such a negotiable instrument. It was intended to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case the cheque was dishonoured and to safeguard and prevent harassment of honest drawers. (See *Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd.* (2006) 3 SCC 658, *C.C. Alavi Haji v. Palapetty Muhammed & Anr.* (2007) 6 SCC 555 and *Damodar S. Prabhu v. Sayed Babulal H.* (2010) 5 SCC 663). Having said that, we must add that one of the salutary principles of interpretation of statutes is to adopt an interpretation which promotes and advances the object sought to be achieved by the legislation, in preference to an interpretation which defeats such object. This Court has in a long line of decisions recognized purposive interpretation as a sound principle for the Courts to adopt while interpreting statutory provisions. We may only refer to the decisions of this Court in *New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar* (AIR 1963 SC 1207), where this Court observed:

“It is a recognised rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning, the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its power invalid.”

A 28. Reference may also be made to the decision of this Court in *Deputy Custodian, Evacuee Property v. Official Receiver* (AIR 1965 SC 951), where this Court observed:

B “The rules of grammar may suggest that when the section says that the property is evacuee property, it prima facie indicates that the property should bear that character at the time when the opinion is formed. But Mr. Ganapathy Iyer for the appellants has strenuously contended that the construction of s. 7(1) should not be based solely or primarily on the mechanical application of the rules of grammar. He urges that the construction for which Mr. Pathak contents and which, in substance, has been accepted by the High Court, would lead to very anomalous results; and his arguments is that it is open to the Court to take into account the obvious aim and object of the statutory provision when attempting the task of construing its words. If it appears that the obvious aim and object of the statutory provisions would be frustrated by accepting the literal construction suggested by the respondent, then it may be open to the Court to enquire whether an alternative construction which would serve the purpose of achieving the aim and object of the Act, is reasonably possible.”

F 29. The decision of this Court in *Nathi Devi v. Radha Devi* (2005) 2 SCC271, reiterates the rule of purposive construction in the following words:

G “Even if there exists some ambiguity in the language or the same is capable of two interpretations, it is trite the interpretation which serves the object and purport of the Act must be given effect to. In such a case the doctrine of purposive construction should be adopted.”

H 30. To the same effect is the decision of this Court in *S.P. Jain v. Krishan Mohan Gupta* (1987) 1 SCC 191, where this Court observed:

"We are of the opinion that law should take a pragmatic view of the matter and respond to the purpose for which it was made and also take cognizance of the current capabilities of technology and life- style of the community. It is well settled that the purpose of law provides a good guide to the interpretation of the meaning of the Act. We agree with the views of Justice Krishna Iyer in *Busching Schmitz Private Ltd's* case (supra) that legislative futility is to be ruled out so long as interpretative possibility permits."

31. 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.

32. The controversy, in our opinion, can be seen from another angle also. If the decision in *Sadanandan Bhadran's* case (supra) is correct, there is no option for the holder to defer institution of judicial proceedings even when he may like to do

A 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

B 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

C cheque amount is paid by the drawer. The magistracy in this country is over-burdened 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 (supra) result in filing of prosecution, avoidable litigation

D 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

E is entirely because of the compulsions arising out of the decisions in *Sadanandan Bhadran's* case (supra), it is difficult to say that the law declared in that decision has not added to court congestion.

F 33. In the result, we overrule the decision in *Sadanandan Bhadran's* case (supra) and hold that 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

G Instruments Act. The reference is answered accordingly. The appeals shall now be listed before the regular Bench for hearing and disposal in light of the observations made above.

K.K.T.

Reference answered.

H