(1993) 02 KL CK 0075

High Court Of Kerala

Case No: Criminal M.C. 254 of 1993

Madhavan		APPELLANT
	Vs	
Addl. Judicial First Class Magistate		RESPONDENT

Date of Decision: Feb. 26, 1993

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 138, 142

Citation: (1994) 2 CivCC 320

Hon'ble Judges: L. Manoharan, J

Bench: Single Bench

Advocate: K.K. Bhaskaran and K.B. Suresh, for the Appellant; T.B. Surendran and K.I. Abdul Rasheed, Public Procecutor, for the Respondent

Final Decision: Dismissed

Judgement

Manoharan, J.
Petition u/s 482 Code of Criminal Procedure is to quash the proceedings in C.C. 471 of 1991 of the Judicial First Class Magistrate''s Court, Ernakulam. Photo copy of the complaint is Annexure A-4.

2. According to the Petitioner, the son of the Petitioner had business transaction with the 2nd Respondent and the 3rd Respondent Sub Inspector of Police who is a friend of the 2nd Respondent got the son of the Petitioner to the police station and made him execute Annexure A-1 receipt under duress purporting to be one for Rs. 58.200/-. Then the Petitioner was taken to the police station by the 3rd Respondent on 17-4-1991 learning that the Petitioner had account with the Union Bank of India, South Chittoor, and the 3rd Respondent at the behest of the 2nd Respondent made the Petitioner to sign a blank cheque leaf under threat and corecion. Later the Petitioner received Annexure A-2 notice dated 21-6-1991 intimating that steps u/s

138 of the Negotiable Instruments Act (for short ''the Act'') would be taken, On receipt of the said notice, Petitioner sent Annexure A-3 reply dated 1-7-1991 to the 2nd respondant which he received on 2-7-1991. As per Annexure A-3 it was intimated that there is no obligation for the Petitioner to pay any amount as per cheque and also the circumstance under which the cheque was signed, in spite of the same, the second Respondent filed Annexure A-4 complaint on 3-8-1991 which was beyond the period of limitation u/s 142 of the Act. The learned Magistrate took congnizance of the same. Thereupon the Petitioner filed Annexure A-5 petition for discharge, that petition was dismissed by Annexure A-6 order.

3. Learned counsel for the Petitioner maintained that, no liability was created under the cheque since the same was executed under the circumstances already stated, and he also contended that since the complaint was filed beyond one month of the cause of action, the complaint is barred by limitation as per Section 142 (b) of the Act.

4. On the other hand, learned counsel for the 2nd Respondent would deny the alleged circumstance under which the cheque was signed and he would also contend that since the complaint was filed within one month of the expiry of 15 days of the receipt of the notice issued by the Petitioner, the complaint is within time.

5. Being a proceeding u/s 482 Code of Criminal Procedure, disputed question of fact cannot be gone into. The allegation as to the circumstance under which the cheque was signed by the Petitioner being disputed question of fact, the same could arise for determination at trail and the second Respondent will have to prove the ingredients u/s 138 of the Act. The Petitioner certainly will be free to substantiate his contention as to the invalidity of the transaction. All that to be mentioned in this connection is, those disputed questions of fact cannot be adjudicated in this proceeding and the same cannot be made a ground for quashing the complaint.

6. As regards the question of limitation the contention is based on Section 142 (b) of the Act Section 142 of the Act reads:

142. Cognisance of offence,- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no court shall take congnizance of any offence punishable u/s 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;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistratee of the first class shall try any offence punishable u/s 138.

7. The thrust of the contention to the learned counsel for the Petitioner is since Annexure A-3 reply denying liability to pay any amount as per the cheque was received by the 2nd Respondent on 2-7-1991 and as the complaint was filed on 3-8-1991, the same being beyond one month of 2-7-1991 is barred by limitation. According to the learned counsel the cause of action for the Petitioner to file the complaint arose on receipt of Annexure A-3 on 2-7-1991 which intimated that the Petitioner is not liable to make payment. Therefore, it is the contention of the Petitioner that the complaint ought to have been filed within one month of the date of receipt of the notice refusing to pay the amount.

8. As per. Section 138 of the Act ingredients to be established are the cheque should have been issued in discharge of whole or part of a debt or liability, that the cheque should have been presented within six months or its specific validity period which ever is earlier; the payee or the holder should have given notice demanding payment within 15 days of receiving information of dishonour on the reason of insufficiency of funds, and the drawer fails to make the payment within 15 days of the receipt of the notice of dishonour.

9. As per Clause (c) of the proviso to Section 138 of the Act, the drawer of the cheque has to make the payment within 15 days of the receipt of notice of dishonour. Section 142 (b) of the Act states that, complaint has to be filed within one month of the date on which the cause of action arose under clause (c) of the proviso to Section 138 of the Act. Thus the crucial question is as to when the cause of action under clause (c) of the proviso to Section 138 of the Act would arise. As per the wording of Clause (c) as the drawer need pay the amount only within 15 days of the receipt of notice of dishonour; the cause of action could arise only on the default of making the said payment within the said period. As noted the contention of the learned counsel for Petitioner is, the 2nd Respondent need not have waited till the expiry of the 15 days as the intimation of refusal to pay reached him before the expiry of 15 days. Consequently, according to the learned counsel for the Petitioner, the cause of action arose from the date of receipt of notice of reusal.

10. This argument on the wording of clause (c) of the proviso to Section 138 of the Act cannot be accepted. Clause ''(c) of the proviso to Section 138 of the Act enjoins that the drawer need make the payment only within 15 days, and failure to make the payment within 15 days being one of the conditions to maintain action u/s 138 of the Act, a complaint filed before the expirty of the said period would not be maintainable. In the context of Clause (c) of the proviso to Section 138 of the Act it is not possible to interpret Section 138 of the Act to mean that, cause of action u/s 138 of the Act can arise only on the expiry of 15 days mentioned in proviso (c) of the said section.

11. Learned counsel for the Petitioner relied on the decision in Raj Kumar Jain and Others Vs. Smt. Jagwati Devi and Others, to contend that an unequivocal threat to infringe the right asserted in the suit would cause the arising of cause of action.

That, no doubt is the general rule but when the statute itself provides as to when the cause of action for complaint would arise, it will not be permissible to read into that provision conditions which are not intended on account of the clear and unambiguous wording of the provision.

12. Learned counsel for the 2nd Respondent relied on the decision in M/s. Mahalakshmi Enterprises, Calicut - Kerala and another Vs. Sri Vishnu Trading Company and another, to contend that, the period of one month starts from the 16th day after the receipt of notice of dishonour by the drawer. In the decision in Prithviraj v. Mathew Koshy 1991 (1) KLT 595 (DB) it is pointed out that: "Dishonour of cheque by itself does not give rise to a cause of action, because payment can be made on receipt of notice of demand contemplated in clause (b) of Section 138 and in that event, there is no offence. Failure to pay the amount within fifteen days of receipt of notice alone is the cause of action and nothing else." (Emphasis supplied). When such is the position as the complaint admittedly has been filed before the expiry of one month form the 16th day of the receipt of the notice of dishonour the complaint is within time.

The Crl. M.C. is without merit and the same is liable to be dismissed which accordingly is hereby dismissed.