
Abdul Majeed, K.V. Vs A. Parumal

Criminal R.P. No. 496/93 R

Court: High Court Of Kerala

Date of Decision: May 31, 2002

Acts Referred:

Negotiable Instruments Act, 1881 (NI) – Section 138

Citation: (2002) 2 KLJ 27 : (2002) 3 RCR(Criminal) 707

Hon'ble Judges: M.R. Hariharan Nair, J

Bench: Single Bench

Advocate: K.T. Sankaran, for the Appellant; Aysha Youseff, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M.R. Hariharan Nair, J.

The complainant in S. T. No. 2101 of 1992 of the Judicial First Class Magistrate's Court, Pattambi, is aggrieved

by the dismissal of the complaint filed by him alleging offence u/s 138 of the Negotiable Instruments Act against the Respondent.

2. The Petitioner

had alleged that Ext. P-I cheque for a sum of Rs. 16,800 drawn on the Indian Overseas Bank, Madras was issued by the Respondent to cover the

liability arising from purchase of timber planks of different sizes on various occasions from the complainant and that the cheque on presentation was

repeatedly dishonoured for want of funds. The last of the series of dishonouring came to the notice of the complainant through intimation sent from

the bank only on 9th June 1992. Within three days the complainant sent statutory notice to the Respondent. But it was not delivered and came

back with the endorsement ""door locked"" on 29th June 1992. Within one month therefrom i.e. on 28th July 1992, the complaint was filed.

3. A petusal of the impugned judgment shows that the reason for dismissal of the complaint was the fact that the notice was issued only based on

the last of the series of dishonouring by the bank and that the Petitioner could have sent the notice even when the cheque was dishonoured for the

first time on 18th January 1992. In that regard the learned Magistrate relied on the decision in Kumaresan v. Ameerappa 1991 (1) KLT 893 to

take the view that repeated presentation of cheques cannot confer cause of action on the payee to file complaint u/s 138 of the Negotiable

Instruments Act.

4. During hearing today, it was conceded at the bar that the aforesaid decision has been overruled by virtue of the clear decisions of the Apex

Court itself reported in Sadanandan Bhadrar v. Madhavan Sunil Kumar 1998 (2) KLT 765 and S.I.L. Import, U.S.A. v. Exim Aides Silk

Exporters 1999 (2) KLT 275. In the former case it was found by the Court that a complainant would get a cause of action only when three

conditions are fulfilled. They are: (i) the cheque should have been presented to the bank within six months of its issue or within the period of its

validity whichever is earlier; (ii) payee should have made a demand for payment by registered notice after the cheque is returned unpaid; and (iii)

that the drawer should have failed to pay the amount within 15 days of the receipt of notice. It is only when all the above conditions are satisfied

that a prosecution can be launched u/s 138 of the Negotiable Instruments Act. The cheque can be presented any number of times during the period

of its validity, but the cause of action would arise only once and that is when the first notice is given to the drawer.

5. In the latter case it was found that limitation for the complaint would start running from the date of completion of offence which is the date of

cause of action and that this would be the date on which the statutory notice is served on the drawer. In view of these decisions the learned

Magistrate was clearly in error in discarding the complainant's case on the ground that even before the dishonour intimated to the complainant on

9th June 1992 there have been very many presentations of the cheque and repeated dishonouring of the same.

6. The Respondent has a contention that the averments in the complaint are vague in so far as the relevant dates have not been specifically pleaded.

Here is a case where the complainant had produced before Court all relevant documents along with the complaint itself and that will include the

returned cheque, returned notice etc. This clearly gives the relevant dates and the Respondent cannot be heard to contend that he was not posted

with the relevant information justifying a proper defence.

7. In the circumstances the dismissal of the complaint made by the learned Magistrate is unjustified and accordingly the impugned judgment is set

aside. The matter is remitted to the learned Magistrate with direction to proceed with the case from the stage at which it stood as on 8th January

1993 when the impugned judgment was passed. The parties will be entitled to adduce further evidence, if any, as they may choose to adduce. The

matter will be decided afresh after fresh hearing.

The revision petition is disposed of as above. The parties are directed to appear before the trial court without further notice on 25th July 2002.