(2000) 02 SC CK 0007

Supreme Court of India

Case No: Criminal Appeal No. 113 of 2000 Arising out of SLP (C) No. 1074/98

Suman Sethi		APPELLANT
	Vs	
Ajay K. Churiwal and Another		RESPONDENT

Date of Decision: Feb. 2, 2000

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138, 139

Citation: (2000) 1 ACR 466 : AIR 2000 SC 828 : (2000) AIRSCW 383 : (2000) 1 ALD(Cri) 550 : (2001) 1 CALLT 1 : (2000) 100 CompCas 444 : (2000) CriLJ 1391 : (2000) 2 GLR 1071 : (2000) 1 JT 493 : (2000) 1 KLT 701 : (2000) 2 MPHT 411 : (2000) MPLJ 610 : (2000) 1 OLR 31

Hon'ble Judges: S. N. Phukan, J; G. T. Nanavati, J

Bench: Division Bench

Advocate: S.S. Ray, Harish N. Salvc, R.F. Nariman and Rajeev Dhawan and Sushil Kumar Jain, A.P. Dhamija, Madhurima Tatia, Anjali Dhoshi, Sanjiv Sen, Rajan Narain, Dilip Sinha and J.R. Das, for Sinha and Das, K.K. Mahalik, Ranjan Mukherjee, Pradeep Aggarwal, Kailash Vasdev, Saivik Verma, D. Mahanty, Umesh Kumar Bohre, A. Mishra, Prakash Srivastava, L.P. Singh and N.B. Khatiwada, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.N. Phukan, J.
Leave granted.

2. This appeal is directed against the judgment and order dated 3-10-1997 passed by the Calcutta High Court in Criminal Revision No. 1611 /97. By the impunged judgment, the High Court set aside the order of the Metropolitan Magistrate-16th, Calcutta passed in Case No. C/1661/96.

3. Briefly stated the facts are as follows :

The appellant issued a cheque for Rs. 20,00,000/- (Rupees Twenty Lacs) in favour of respondent No. 1. The cheque was presented to the banker which was returned on 2nd August, 1996 with the remarks "In-sufficient Fund". Thereafter within 15 days of return of the cheque, respondent No. 1 gave a notice of demand as required under proviso (b) to Section 138 of The Negotiable Instruments Act, 1881, as amended, for short ''the Act''. As the appellant failed to meet the demand, a complaint was filed before the Metropolitan Magistrate. On perusal of the above notice, the Magistrate was of the view that the demand made in the notice being higher than the amount of the cheque, notice was bad in view of an earlier decision of the High Court. Respondent No. 1 approached the High Court by filing the revision petition which was allowed by the impugned order and the order of the Metropolitan Magistrate was set aside. The High Court was of the view that the decision of the High Court on which reliance was placed by Magistrate was distinguishable. The High Court held that as in notice, respondent No. 1 clearly demanded the cheque amount, the notice was a valid one and accordingly set aside the order of the Metropolitan Magistrate.

4. We have heard Dr. Rajeev Dhawan, learned Senior Counsel for the appellant. Mr. Sanjiv Sen, learned Counsel for the respondent No. 1 and Mr. Dilip Sinha learned Counsel for respondent No. 2 - the State of West Bengal

5. The only question for consideration by us is whether the notice in question issued under proviso (b] to Section 138 of the Act was valid or not. We extract below Sections 138 and 139 of the Act:

138 - Dishonour of cheque for insufficient, 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 form 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 one year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

(Emphasis supplied)

139- Presumption in favour of holder.-

It shall be presumed, unless the contrary is proved, that the holder of cheque received provided the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.

6. We have to ascertain the meaning of the words "said amount of money'' occurring in clauses (b) and (c) to the proviso to Section 138. Regarding the Section 138 as a whole we have no hesitation to hold that the above expression refers to the words "payment of any amount-of money" occurring in main Section 138 i.e. the cheque amount. So in notice, under Clause (b) to the proviso, demand has to be made for the cheque amount. Dr. Dhawan, learned senior counsel has urged that Section 138 being a penal provision has to be construed strictly. We may refer to the decision of this Court in 286250 . This Court considered the rule of construction of a penal provision and quoted with approval the following passage of the decision of the Judicial Committee in Dyke v. Elliot (1872) LR 4 AC 184. The passage runs as follows:

No doubt all penal Statutes are to be construed strictly, that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a casus omissus, that the thing is so clearly within the mischief that it must have been intended to be included if thought of. On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair commonsense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument.

7. There is no ambiguity or doubt in the language of Section 138. Reading the entire Section as a whole and applying commonsense, from the words, as stated above, it is clear that the legislature intended that in notice under Clause (b) to the proviso, the demand has to be made for the cheque amount. According to Dr. Dhawan, the notice of demand should not contain anything more or less than what is due under the cheque.

8. It is well settled principle of law that the notice has to be read as a whole. In the notice, demand has to be made for the "said amount" i.e. cheque amount. If no such demand is made the notice no doubt would fall short of its legal requirement. Where in addition to "said amount" there is also a claim by way of interest cost etc. whether the notice is bad would depend on the language of the notice. If in a notice while giving up break up of the claim the cheque amount, interest damages etc. are

separately specified, other such claims for interest, cost etc. would be superfluous and these additional claims would be severable and will not invalidate the notice. If, however, in the notice an omnibus demand is made without specifying what was due under the dishonoured cheque, notice might well fail to meet the legal requirement and may be regarded as bad.

9. This Court had occasion to deal with Section 138 of the Act in 294878 and held that the object of the notice is to give chance to the drawer of the cheque to rectify his omission. Though in the notice demand for compensation, interest, etc. is also made drawer will be absolved from his liability u/s 138 if he makes the payment of the amount covered by the cheque of which he was aware within 15 days from the date of receipt of the notice or before complaint is filed.

10. In Section 138 legislature clearly stated that for the dishonoured cheque the drawer shall be liable for conviction if the demand is not made within 15 days of the receipt of notice but this is without prejudice to any other provision of the Act. If the cheque amount is paid within the above period or before the complaint is filed the legal liability u/s 138 will cease and for recovery of other demands as compensation, costs, interest etc., a civil proceeding will lie. Therefore, if in a notice any other sum is indicated in addition to the "said amount" the notice cannot be faulted, as stated above.

11. Drawing our attention to Section 139 of the Act, Mr. Dhawan has urged that in the notice in addition to "said amount" other demands are made the presumption as contemplated u/s 138 would operative. We are unable to accept the submission of the learned senior counsel as Section 139 has to be read with Section 138 and reading both the Sections together it would appear that presumption would arise only in respect of the "said amount".

We extract below the relevant portion of notice:

I, therefore, by means of this notice call upon you to pay the amount of Rs. 20.00.000/- along with the incidental charges of Rs. 1.500/- spent on the cheque on its presentation and also Rs. 340/- as notice charges within a period of 15 days from the date of receipt thereof, failing which may clients shall take necessary legal steps against you holding you liable for all costs and consequences thereof, which please note.

12. In the notice in question the "said amount" i.e. the cheque amount has been clearly stated. Respondent No. 1 had claimed in addition to the cheque amount, incidental and notice charge. These two amounts are severable. In the notice it was clearly stated that failure to comply with the demand necessary legal steps will be taken up. If respondent No. 1 had paid the cheque amount he would have been absolved from the criminal liability u/s 138, Regarding other claims, a civil suit would be necessary.

13. We are, therefore, do not find any merit, in the present appeal and accordingly dismissed.