

(2001) 02 CAL CK 0002

Calcutta High Court

Case No: C.R.R. No. 1017 of 2000

Swastik Projects Private Ltd. and
Another

APPELLANT

Vs

Snehakana Chatterjee

RESPONDENT

Date of Decision: Feb. 22, 2001

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138, 19, 5, 6

Citation: (2002) CriLJ 185

Hon'ble Judges: Debiprasad Sengupta, J

Bench: Single Bench

Advocate: Sekhar Bose and Joymalya Bagchi, for the Appellant; S.N. Sanyal and Arup Roy Chowdhury, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Debiprasad Sengupta, J.

The present revisional application is for quashing of a proceeding being case No. C/1412/97 pending in the Court of learned Metropolitan Magistrate, 15th Court, Calcutta u/s 138 of the Negotiable Instruments Act, 1881.

2. On or about 15-3-1997 the petitioner issued several cheques in favour of 13 co-owners allocation in respect of premises No. 9, Pankajini Chatterjee Road and the said cheques were post dated cheques dated 31-3-1997. The aggregate amount of the said cheques was Rs. 18,65,828/-. The said cheques were presented for encashment with the banker of the complainant and the same were dishonoured. Thereafter demand notice was sent demanding the cheque amount. On refusal to make the payment of the cheque amount the aforesaid proceeding was initiated against the accused petitioner.

3. The only point raised by the learned Advocate of the petitioner is that a post dated cheque is a bill of exchange and it cannot be considered as a cheque within the meaning of Section 138 of the N.I. Act. A cheque is an instrument which is payable on demand. A post dated cheque, which is not payable, on demand, is not cheque within the meaning of Section 138 of the N.I. Act. In support of his contention Mr. Bose the learned Advocate of the petitioner relies on a judgment of the Hon"ble Apex Court reported in 1993 Cal Cri LR (SC) 165 (Anil Kumar Sawhney v. Gulshan Rai). In the said judgment it was held by the Hon"ble Supreme Court as follows :--

Section 5 and 6 of the Act define "Bill of Exchange" and "Cheque". A "Bill of Exchange" is a negotiable instrument in writing containing an instruction to a third party to pay a stated sum of money at a designated future date or on demand. A "cheque" on the other hand is a bill of exchange drawn on a bank by the holder of an account payable on demand. Thus a "cheque" u/s 6 of the Act is also a bill of exchange but it is drawn on a banker and is payable on demand. It is thus obvious that bill of exchange even though drawn on a banker, if it is not payable on demand, it is not a cheque. A "postdated cheque" is only a bill of exchange when it is written or drawn, it becomes a "cheque" when it is payable on demand. The post dated cheque is not payable till the date which is shown on the face of the said document. It will only become cheque on the date shown on it and prior to that it remains a bill of exchange u/s 5 of the Act. As a bill of exchange a postdated cheque remains negotiable but it will not become a "cheque" till the date when it becomes "payable on demand."

It is clear from Section 19 that a "cheque" is an instrument which is payable on demand. A post dated cheque, which is not payable on demand till a particular date, is not cheque in the eyes of law till the date of it becomes payable on demand.

An offence to be made out under the substantive provisions of Section 138 of the Act it is mandatory that the cheque is 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. It is the cheque drawn which has to be presented to the bank within the periods specified therein., When a postdated cheque is written or drawn it is only a bill of exchange and as such the provisions of Section 138(a) are not applicable to the said instrument. The post dated cheque becomes a cheque under the Act on the date which is written on the said cheque and the six months period of has to be reckoned for the purposes of Section 138(a) from the said date.

The net result is that a post dated remains a bill of exchange till the date written on it. With effect from the date shown on the face of the said cheque it becomes a "cheque" under the Act and the provisions of Section 138(a) would squarely be attracted. In the present case the postdated, cheques were drawn in March, 1990 but they became "cheque" in the year 1991 on the dates shown therein. The period of six months, therefore, has to be reckoned from the dates mentioned on the face

of the cheques.

4. I have carefully gone through the judgment of the Hon"ble Apex Court. In the said Judgment it was held by the Hon"ble Supreme Court that a cheque is an instrument which is payable on demand. A post dated cheque, when it is written or drawn, is only a bill of exchange and as such the provision of Section 138(a) is not applicable to the said instrument. It was further held by the Hon"ble Court that a post dated cheque becomes a cheque under the Act on the date which is written on the said cheque. Such a cheque is to be presented for encashment in the Bank within a period of six months from the date which is put on such cheque. In the present case post dated cheque was issued/drawn on 15-3-1997 with a date 31-3-1997 which was put on it. So there can not be any doubt that on and from 31-3-1997 such post dated cheque became a cheque within the meaning of Section 138 of the N.I. Act. In the aforesaid judgment it was further held by the Hon"ble Apex Court that if the object of bringing Section 138 of N.I. Act on the statute has to be fulfilled then the only interpretation which can be given to Clause (a) of proviso to Section 138 of the Act is that a post dated cheque shall be deemed to have been drawn on the date it bears.

5. The learned Advocate appearing for the opposite parties submits that the Judgment of the Hon"ble Apex Court referred to above is in favour of the complainant/opposite party. The learned Advocate submits that in the present case the post dated cheque bears the date 31-3-1997. So it is clear that on and from such date (31 -3-1997) the post dated cheque became a cheque. Such cheque was presented for encashment within the period of its validity and the same was dishonoured. Thereafter demand notice was sent to the drawer/company demanding payment of the cheque amount. On failure to make such payment within the stipulated period of 15 days, the cause of action arose and the petition of complaint was filed. So there is no illegality in the proceeding for which the accused/petitioner can approach this Court for quashing of proceeding at this initial stage.

6. Some other grounds have been taken in the revisional application, but such grounds were not pressed by the learned Advocate of the petitioner. The learned Advocate for the complainants/O.P. also made his submissions on such point. But since those points were not pressed by the petitioners, the same does not require any discussion.

7. I have heard the learned Advocates of the respective parties. In my considered view the arguments advanced by the learned Advocate of the petitioner cannot be accepted. I do not find any merit in the revisional application. Accordingly the application falls and the same is dismissed.

8. Since this is a very old case of 1997 I direct the learned Magistrate to proceed with the trial and to conclude the same with utmost expedition without granting any unnecessary adjournment to either of the parties,

C.R.R. No. 1013 of 2000,

C.R.R. No. 1014 of 2000,

C.R.R. No. 1015 of 2000,

C.R.R. No. 1016 of 2000,

C.R.R. No. 1018 of 2000,

Mr. Sekhar Bose,

Mr. Joymalya Bagchi, for the Petitioner.

Mr. S.N. Sanyal Mr. Arup Roy Choudhury, for the Opposite Party.

9. Since similar point is involved in the aforesaid revisional applications, the Judgment delivered by the this Court in C.R.R. No. 1017 of 2000 shall also govern the said revisional applications, which are also accordingly dismissed.

10. The interim order earlier granted by this Court stands vacated. The learned Magistrate is directed to proceed with the trial and to conclude the same with utmost expedition.