

Girish Chandra Pandey Vs Kanhaiyalal Chandak

Court: Calcutta High Court

Date of Decision: May 21, 1997

Acts Referred: Negotiable Instruments Act, 1881 (NI) â€” Section 138, 141(1)

Citation: (1998) 4 RCR(Criminal) 123

Hon'ble Judges: Surya Kumar Tiwari, J

Bench: Single Bench

Advocate: Milan Mukherjee and Mr. Subir Ganguly, for the Appellant; Biswanath Sanyal for Opposite Party No. 1 and Mr. Swapan Kumar Mallick for Opposite Party No. 2, for the Respondent

Final Decision: Dismissed

Judgement

Surya Kumar Tiwari , J.

This revisional petition is directed against the appellant judgment of City Sessions court, Calcutta, in Criminal

Appeal No. 50 of 1992 dated 31.5.96, confirming conviction and sentence recorded by the learned Trial Magistrate in Case No. C-309 of 1989.

2. One Kanhaiya Chandak filed a petition of complaint u/s 138 of the Negotiable Instruments Act. The complainant alleged that accused No. 1 is a

partnership firm of which the accused Nos. 2 to 4 were partners.

3. It was further alleged that the complainant had lent a sum of Rs. 67,950/- on 19.6.89, which carried 18 per cent interest. In order to repay the

loan, the petitioners issued a cheque for Rs. 67,950/- in favour of the complainant which was drawn on United Bank of India. The said cheque

was presented for encashment through State Bank of Hyderabad but the same was returned by the Bank with an endorsement ""full cover not

received"". The complainant thereafter sent a notice by registered post on 23.8.89 to accused No. 1 (i.e. Firm), requiring the Firm to pay the

amount within 15 days from the date of receipt of notice. The said notice was returned by the postal department with an endorsement ""always

absent in my duty hours"". A copy of the notice was also sent under the certificate of posting to other accused persons In spite of service of notice

no payment was made within a fortnight of the notice. Hence the complaint.

4. The learned Magistrate convicted the accused persons and each was sentenced to pay fine of Rs. 5,000/- or in default to suffer simple

imprisonment for three months. The accused persons filed an appeal which was dismissed. Hence this appeal,

5. The learned Counsel for the petitioners Mr. Milan Mukherjee has urged that since the notice was sent only to partnership firm and not to each

partner individually, the petitioners cannot be convicted.

6. Section 141(1) of the N.I. Act is as under:

If the person committing an offence u/s 138 is a company, every person who, "at the time offence was committed, was in charge of, and was

responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence

and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub section shall render any person liable to punishment, if he proves that the offence was committed

without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

7. The wordings of section 141 of the N.I. Act are identical to that of section 10 of the E.C. Act. The Apex Court in the case of Sheo Ratan

Agarwal v. State of W.B. (1984) 4 SCC 353, while interpreting section of E.C. Act, laid down that if a partnership or company has committed

any default then ""(1) the company itself, (2) every person who at the time contravening was committed was in charge of and/or responsible to the

company for conduct of business and (3) any director, manager, secretary, other officer of the company with whose consent or connivance or

because of neglect attributable to whom the offence has been committed. Any one or more or all of them may be prosecuted and punished. The

company also may be prosecuted. The person in charge only may be prosecuted. The conniving officer may individually be prosecuted"". There is

no statutory compulsion that the person in charge or the officer of the company may not be prosecuted unless he be ranged alongside the company

itself. I, therefore, hold that if the partnership firm failed to pay the amount within the stipulated time, after receipt of notice, the partners are also

liable to be prosecuted. When firm has been served with a notice each partner need not be served with a separate notice individually.

8. The net question that arises for consideration is whether the notice shall be deemed to be served? Section 27 of the General Clauses Act

provides that the expression "serve" or either of the expressions "give" or "sent" or any other expression is used then unless a different intention

appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the

document and unless the contrary is proved, the notice shall be deemed to have been served at the time at which the letter would be delivered in

the ordinary course of post. The Apex Court in case of State of Kerala v. T.K. Undayasankaran, 1995(3) Suppl. SCC 518 and Union of India

(UOI) Vs. Kishan Chand and Others, held the notices served even when the registered envelopes were returned with an endorsement as "not

known" or address incomplete".

9. I therefore, hold that if the petitioners were not available at their place of business and their establishment remains closed during the working

hours, it will be deemed that the notice was served on them.

10. The last contention of the learned counsel for the petitioners is that the complainant had not established that the cheque had bounced because

the cheque does not contain any endorsement to the effect that the same has been referred to drawee because of in-sufficiency of funds. Exhibit-3

is the certificate of the United Bank of India which discloses that the cheque was dishonored because "full cover not received",

11. The statement of account of the firm belonging to the petitioners goes to show that on 31st July, 1989, there was only a balance of Rs. 547,88

P. Admittedly the cheque was issued on 14.8.89 on which date there was no balance in the petitioners account, It may also be noted that before

the cheque was actually issued, a letter was addressed to the Bank on 22.7,89 by the petitioners to stop payment of cheque No. 010009. Hence

the petitioners have been rightly convicted. Only in order to avoid such mischief, Chapter 17 has been enacted by legislature vide Central Act No.

66 of 1988. The petition is, devoid of any substance. The same is dismissed. If the petitioners do not pay the fine within one month from date, they

shall be sent to Jail to serve out their sentence in default.