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K.K. SIDHARTHAN

v.

T.P. PRAVEENA CHANDRAN AND ANR.

OCTOBER 8, 1996

B

[G.N. RAY AND B.L. HANSARIA, JJ.]

Negotiable Instruments Act, 1881—Section 138 r/w 149—Dishonour of cheque because of 'stop payment'—Complaint u/s 138—Maintainability—Notice was issued to the payee or holder in due course not to C *present the cheque for encashment—Payee or holder in due course presenting the cheque—Cheque returned on instruction—Sec. 138 held not applicable—Complaint liable to be quashed.*

Respondent filed a complaint against the appellant u/S 138 r/wS 149 of the Negotiable Instruments Act, 1881 and Section 480 IPC r/w Ss 190 & D **200 of the Code of Criminal Procedure, alleging that the appellant petitioner had issued two post dated cheques but on the cheques being presented the same were returned unpaid with the endorsement 'Payment countermanded by the drawer' and for want of sufficient funds in the account. The appellant filed a petition for quashing the complaint but it** E **was dismissed. Hence this appeal.**

The appellant submitted that the cheques were returned, not because of insufficient funds, but he had issued stop memo to the bank and that there was sufficient balance in the account of the appellant.

F **The respondent contended that the cheques had been dishonoured because of insufficiency of funds and that the bank had issued letter stating that when the cheques in question were presented there was sufficient balance in the account of the appellant, with a purpose to help the accused in the case.**

G **Allowing the appeal, this Court**

HELD : If after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or the holder H **in due course presents the cheque to the bank for payment and when it is**

returned on instruction, section 138 of the Negotiable Instruments Act does not get attracted. In the present case cheques were presented after the appellant had directed its bank to 'stop payment'. Though it had been averred in the complaint that the cheque dated 10.10.1994 was presented for collection on the date itself through the bank of the respondent, the cheque was presented on 15.10.1994 (in clearing). The lawyer's notice to the respondent being of 4th October, 1994 which had been replied on 12th October, 1994 from Cochi, which is the place of the respondent, whereas the Advocate who issued notice on behalf of the appellant was at Thrissur, it would seem that the first cheque had even been presented after the instruction of 'stop payment' issued by the appellant had become known to the respondent. No case under section 138 of the Act had been made out and, therefore, the complaint is liable to be quashed. [251-E-H; 252-A; B]

Electronics Trade and Technology Development Corpn. Ltd. **v.** *Indian Technologists and Engineers (Electronics) (P) Ltd.*, **[1996] 2 SCC 739, referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1774 OF 1996.

From the Judgment and Order dated 23.8.95 of the Kerala High Court in Crl. M. C. No. 677 of 1995.

C.N. Sree Kumar and Shaju Francis for the Appellant.

T.T. Kunhikannan and Shakil Ahmed Syed for the Respondents.

The Judgment of the Court was delivered by

HANSARIA, J. Respondent No. 1, hereinafter referred to as the respondent, filed a complaint against the appellant under section 138 read with 149 of the Negotiable Instruments Act, 1881 (for short the 'Act') and section 420 of the IPC read with sections 190 and 200 of the Code of Criminal Procedure. The gravamen of the allegation is that the petitioner had issued two post-dated cheques dated 10.10.1994 and 31.12.1994, each for a sum of Rs. 3,00,000, drawn on Indian Overseas Bank, Trichur Branch. But on the cheques being presented, the same were returned unpaid on 15.10.1994 with the endorsement "Payment countermanded by the drawer". The complaint further stated that the cheques was returned unpaid for want of sufficient funds in the account. The appellant approached the High

A Court of Kerala for quashing the complaint but the High Court refused to do so. Hence this appeal.

2. The main part of Section 138 of the Act reads as below :

> "138. Dishonour of cheque for insufficiency of funds in the
> B 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 from out of that account for the discharge, in whole or in part, or any debt or other liability, is returned by the bank unpaid, either because of the amount of money
> C 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
> D fine which may extend to twice the amount of the cheque, or with both."

This shows that section 138 gets attracted in terms if cheque is dishonoured because of insufficient funds or where the amount exceeds the arrangement
E made with the bank. It has, however, been held by a Bench of this Court in *Electronics Trade and Technology Development Corpn. Ltd.* v. *Indian Technologists and Engineers (Electronics) (P) Ltd.*, [1996] 2 SCC 739, that even if a cheque is dishonoured because of 'stop payment' instruction to the bank, section 138 would get attracted.

F 3. The case of the appellant is that the cheques were returned, not because of insufficient funds, but because he had issued stop memo to the bank for reasons detailed in the letter of appellant's Advocate dated 4.10.1994 addressed to the respondent. This letter was replied by the respondent on 12.10.94, stating, *inter alia*, that the allegations made in the
G letter of 4.10.1994 were not true; and date and place may be fixed for perusal of the accounts and connected records. The appellant has produced a communication of the Indian Overseas Bank, Thrissur, Branch, which is at page 64 of the Paper Book, showing that when the cheques in question were presented there was sufficient balance in the account of the appellant. This communication bears the numbers of two cheques which
H tally with those mentioned in the complaint. We are, therefore, satisfied

that the cheques were not returned because of insufficient funds, as is the allegation in the complaint. A

3A. It may be stated that the learned counsel for the respondent filed a written submission, without having obtained permission when the case has been finally heard and reserved for judgment, on 7.10.1996 in which it has been stated that the cheques in question were issued against Account No. 562 of the petitioner, in which there was no cover. The further submission is that the letter of the Bank Manager which is at page 64 really represents the balance in Account No. 440. So the contention is that the cheques had been dishonoured because of insufficiency of fund. Though when the learned counsel mentioned about the written submission on 7th in the Court, it was stated that it would not be possible to consider the written submission in view of the fact that the judgment has already been finalised and has been fixed for pronouncement tomorrow; even so, we have gone into the written submission. We find that in the complaint it was not mentioned that the cheques had been issued against Account No. 562, because of which this amounts to making out a new case in the written submission. So, we do not accept the allegation that the bank had issued letter in question "with a propose to the help the accused in the case". B C D

4. The above apart, though in the aforesaid case this Court held that even 'stop payment' instruction would attract the mischief of section 138, it has been observed in para 6, that if "after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course present the cheque to the bank for payment and when it is returned on instruction, section 138 does not get attracted". E F

5. From the facts mentioned above, we are satisfied that in the present case cheques were presented after the appellant had directed its bank to 'stop payment'. We have said so because though it has been averred in the complaint that the cheque dated 10.10.1994 was presented for collection on that date itself through the bank of the respondent which is Catholic Syrian Bank Ltd., from the aforesaid letter of the Indian Overseas Branch, we find that the cheque was presented on 15.10.1994 (in clearing). The lawyer's notice to the respondent being of 4th October, which had been replied on 12th from Cochi, which is the place of the respondent, G H

A whereas the Advocate who issued notice on behalf of the appellant was at Thrissur, it would seem to us that the first cheque had even been presented after the instruction of 'stop payment' issued by the appellant had become known to the respondent.

6. The aforesaid being the position, we are satisfied that no case
B under section 138 of the Act has been made out and we, therefore, quash the complaint. We may make it clear that we have not addressed ourselves on the question whether the respondent was in fact entitled to receive any amount from the appellant.

7. The appeal is, therefore, allowed. In the facts and circumstances
C of the case, we make no order as to costs.

R.A. Appeal allowed.