

M. M. Malik and others v. Prem Kumar Goyal and another  
(G. S. Chahal, J.)

hand as herein the acts of cruelty were committed for forcing the wife to fetch more dowry and the last act was committed in order to throw her out of her matrimonial home to misappropriate her Stri Dhan. Thus the allegations in this case are overlapping. Moreover, the final picture will emerge after the completion of investigation and submission of the challan before the Court concerned. The petitioner shall be at liberty to raise the point regarding the territorial jurisdiction of the Court qua the offence under Section 498-A of the Indian Penal Code at the time of framing the charge.

(10) For the reasons recorded above, there being no merit in this petition, it is hereby dismissed.

J.S.T.

Before : G. S. Chahal, J.

M. M. MALIK AND OTHERS,—Petitioners.

versus

PREM KUMAR GOYAL AND ANOTHER,—Respondents.

Criminal Misc. No. 11343-M of 1990.

14th February, 1991.

*Negotiable Instruments Act, 1881—Ss. 30, 138, 142—Code of Criminal Procedure 1973 (II of 1974)—Scope of S. 138—Cheque issued by Company to the complainant—Bank dishonouring cheque with remarks 'refer to drawer'—Notice u/s 138 issued demanding amount—Company failing to discharge its liability—Debtors to trace creditor for payment—Creditor having office at Pehowa—Jurisdiction of Court to try the complaint.*

Held, that S. 138 comes into play when the three provisos to the Section are also complied with. In fact, all the three provisos must be complied with before the dishonouring of a cheque issued in order to discharge the liability and dishonouring for want of funds can create an offence. S. 142 (b) provides a clincher. The cause of action will be complete when the drawer of the cheque fails to make the payment within 15 days of the receipt of notice contemplated by proviso (b). The offence shall be deemed to have been committed only from the date when the notice period expired.

(Para 5)

*Held further*, that dishonouring of the cheque was only a part of cause of action and the offence was completed only when the petitioner-Company failed to discharge its liability to the creditors. For discharging the debt, the petitioners had to find out their creditors and since the credit was its office at Pehowa, the offence was completed at that place and in this situation, the Court at Kurukshetra had the territorial jurisdiction to try the matter.

(Para 8)

*Petition u/s 482 Cr.P.C. praying that the complaint Ex. P4 along-with further proceedings pending in the court of Sh. Inderjit Mehta, JMIC, Kurukshetra be ordered to be quashed.*

*It is further prayed that pending this petition in this Hon'ble Court, further proceedings pending in the court of Shri Inderjit Mehta, JMIC, Kurukshetra be stayed.*

H. L. Sibal, Sr. Advocate with Ashok Aggarwal, Advocate, for the Petitioners.

J. N. Kaushal, Sr. Advocate with Ashok Jindal, Advocate, for the Respondents.

#### JUDGMENT

*G. S. Chahal, -J.*

(1) This order will dispose of the present criminal miscellaneous and two others, (i.e. Cr. M. 11347-M and 11345-M of 1990) brought under section 482 of the Code of Criminal Procedure, for quashing the complaint Annexure P-4 (in each case) and the proceedings, pending in the Court of the Judicial Magistrate I Class, Kurukshetra. As the common questions of law and fact are involved in all of them, I will refer to the facts contained in the instant case.

(2) According to Prem Kumar Goyal complainant-1, Haryana Milk Foods Ltd., Pehowa complainant No. 2 is a company and he is its advisor duly authorised to initiate the proceedings. Accused No. 5 M/s Dany Dairy and Food Engineers Ltd., Saharanpur (the supplier) is a limited company and accused Nos. 1 to 3 are its directors and accused No. 4 is its Manager Accounts.

(3) *Vide* work order dated 15th April, 1988, complainant No. 2 entered into a contract with the supplier-company for the supply of evaporator and dryer against payment of Rs. 1,40,00,000. Subsequently, on account of modification in design and supply of

M. M. Malik and others v. Prem Kumar Goyal and another  
(G. S. Chahal, J.)

these goods, the scope of the order was reduced to Rs. 1,24,00,000. Against the said work order, the complainant No. 2 advanced Rs. 1,47,43,383/05 paise for facilitation of the manufacture of the goods and their installation and commission according to the committed parameters certified by the Engineers of Damro (USA) and M/s Evapo Dry (UK). The contract was to be completed and the plant was to be commissioned by 15th November, 1983. The supplier-Company in order to diminish their liability regarding repayment of excess amount received by it, issued cheque No. 300538 dated 13th August, 1989 for Rs. 50,000 in favour of complainant No. 2 payable by Punjab and Sind Bank, Civil Lines, Saharanpur (the Bankers of the supplier Co.). Complainant No. 2 through its banker, State Bank of Patiala, Saharanpur presented the said cheque, but it was received back on 17th August, 1989 with the remarks "refer to Drawer" which means non-availability of sufficient funds in the account. This information was supplied by the bankers to complainant No. 2 and on receipt of that intimation, complainant No. 1 through a registered letter dated 26th August, 1989, issued notice under section 138 (b) of the Negotiable Instruments Act (the 'Act' in brief), making a demand for payment of the said amount. This notice was received by accused No. 1, but no payment was made. The accused had, thus, committed an offence u/s 138 of the Act.

(4) The challenge is mainly made to the territorial jurisdiction of the Court at Kurukshetra, pleading that only the Court at Delhi and Saharanpur had the jurisdiction to try the offence. It is also alleged that since M. M. Malik had signed the cheque, only he could be tried for the offence, if any. To appreciate the argument of the learned counsel, the following provisions of the Act may be noted :

"S. 30. *Liability of drawer.*—The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

\* \* \* \* \*

S. 138. *Dishonour of cheque for insufficiency, 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 from

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 provisions of this Act be punished with imprisonment for a term which may extend to one year or with fine which may extend twice the amount of the cheque, or with both :

Provided that nothing contained in this section shall apply unless—

- (a) the cheque has been 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;
- (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.

*Explanation.*—For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.

\* \* \* \* \*

S. 142. *Cognizance of offences.*—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).—

- (a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

M. M. Malik and others v. Prem Kumar Goyal and another  
(G. S. Chahal, J.)

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

\* \* \* \*

Under the provisions of section 30, whenever a cheque is dishonoured, the drawer has to compensate the holder of the cheque. This is in the form of a civil liability. Under section 138, however, an offence is deemed to have been committed if the conditions laid down therein are met.

(5) CHAPTER XVII, inserting sections 138 and 142 was introduced by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988) with effect from 1 April, 1989. The statement of objects and reasons appended to the Bill, explaining the objects of the new CHAPTER reads as follows :

“This clause (clause 4 of the Bill) inserts a new Chapter XVII in the Negotiable Instruments Act, 1881. The provisions contained in the new chapter provide that where any cheque drawn by a person for the discharge of any liability is returned by the bank unpaid for the reason of the insufficiency of the amount of money standing to the credit of the account on which the cheque was drawn or for the reason that it exceeds the arrangements made by the drawer of the cheque with the bankers for that account, the drawer of such cheque shall be deemed to have committed an offence. In that case, the drawer, without prejudice to the other provisions of the said Act, shall be punishable 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. The provisions have also been made that to constitute the said offence—

(a) such cheque should have been presented to the Bank within a period of six months of the date of its drawal or within the period of its validity, whichever is earlier, and

- 
- (b) the payee or holder in due course of such cheque should have made a demand for the payment of the said amount of money by giving a notice, in writing, to drawer of the cheque within fifteen days of the receipt of information by him from the bank regarding the return of the cheque unpaid; and
- (c) the drawer of such cheque should have failed to make the payment of the said amount of money to the payee or the holder in due course of the cheque within fifteen days of the said notice.

It has also been provided that it shall be presumed, unless the contrary is proved, that the holder of such cheque received the cheque in the discharge of a liability. Defences which may or may not be allowed in any prosecution for such offence have also been provided to make the provisions effective. Usual provision relating to offences by companies has also been included in the said new chapter. In order to ensure that genuine and honest bank customers are not harassed or put to inconvenience sufficient safeguards have also been provided in the proposed new chapter. Such safeguards are—

- (a) that no court shall take cognizance of such offence except on a complaint, in writing, made by the payee or the holder in due course of the cheque;
- (b) that such complaint is made within one month of the date on which the cause of action arises; and
- (c) that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate or a Judicial Magistrate of the first class shall try any such offence —”

Section 138 comes into play only when the three provisos to the section are also complied with. I am unable to endorse the argument of Shri H. L. Sibal, Sr. Advocate that the provisos give a defence and are not the ingredients of the offence. In fact, all the three provisos must be complied with before the dishonouring of a cheque issued in order to discharge the liability and dishonouring for want of funds can create an offence. Section 142(b) provides a clincher. The cause of action will be complete when the drawer of

M. M. Malik and others v. Prem Kumar Goyal and another  
(G. S. Chahal, J.)

---

the cheque fails to make the payment within 15 days of the receipt of notice contemplated by proviso (b). The offence shall be deemed to have been committed only from the date when the notice period expired. I derive support to my observations from the following observations made by Thomas, J., in *Paramjit Singh v. Job* (1) :

“When the main body of the section is read along with the proviso, it is clear that the offence will be deemed to have been committed only if the drawer of the cheque failed to make the payment within fifteen days of receipt of the notice. An “offence” as defined in Section 2 (n) of the Code includes not only the doing of a positive act but by omitting to do something as well. Here the relevant provision says that the offence is the omission to make payment within fifteen days of receipt of notice. Drawing the cheque is not the act by which the offence is deemed to have been committed. When the drawer fails to make the payment within the period specified in Clause (c) of the proviso, the offence is complete. This aspect is made further clear in Section 142(b) of the Act. Under the said clause no court shall take cognizance of any offence punishable under Section 138 unless “such complaint is made within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138”. Normally cause of action does not arise until the commission of the offence. When Section 142 (c) says that the cause of action is the one which arises under clause (c) of the proviso, such cause of action is the omission to make payment within fifteen days of the receipt of the notice. —

(6) Shri Sibal, learned counsel then tried to argue that the term “refer to drawer” does not mean that the drawer did not have sufficient funds in his account or the amount of the cheque exceeded the amount of arrangement. He is, however, unable to show that, in fact, the petitioner-Company had to its credit in the account sufficient fund to honour the cheque. The term “refer to drawer” is only a courteous way, normally adopted by a banker, to show its inability to honour the cheque for want of fund. If, in fact, the petitioner-Company had the arrangement or credit in its account with the bank, he can show this fact to the trial Court.

(7) The offence is only described to be deemed a notional matter and the same can happen only after all the conditions in the proviso are also met.

(8) Dishonouring of the cheque was only a part of cause of action and the offence was completed only when the petitioner-Company failed to discharge its liability to the creditors (the complainant herein). For discharging the debt, the petitioners had to find out their creditors and since the creditor was its office at Pehowa, the offence was completed at that place and in this situation, the Court at Kurukshetra had the territorial jurisdiction to try the matter. No ground for quashing the impugned complaint and the subsequent proceedings is made out. All other pleas will be available to the petitioners at the time of trial. The liability of Petitioners other than M. M. Malik can be urged before the trial Magistrate. All the three criminal miscellaneous (enumerated above) are hereby dismissed.

(9) The parties, through their learned counsel, are directed to appear before the trial Magistrate on the 12th day of March, 1991.

S.C.K.

Before : J. S. Sekhon, J.

OM PARKASH,—Petitioner.

*versus*

VIDHYA DEVI,—Respondents.

Criminal Misc. No. 2176-M of 1990.

21st March, 1991.

*Code of Criminal Procedure 1973 (II of 1974)—Ss. 125, 421, 482—Maintenance allowance awarded in favour of wife—Husband's failure to pay—Wife starting execution proceedings—Husband refusing to accept service—Conditional warrants of arrest of husband ordered against husband—Magistrate failing to resort to coercive methods—Such procedure—Illegal.*

*Held*, that if any person fails to comply with the order of the Magistrate to pay maintenance allowance without sufficient cause, such Magistrate may issue warrant for levying the amount due in