

PETITIONER:
K.K. SIDHARTHAN

Vs.

RESPONDENT:
T.P. PRAVEENA CHANDRAN AND ANOTHER

DATE OF JUDGMENT: 08/10/1996

BENCH:
G.N. RAY, B.L. HANSARIA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

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 were returned unpaid for want of sufficient funds in the account. The appellant approached the High 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 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 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 cheques, 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 made with the bank. It has, however, been held by a Bench of this Court in Electronics Trade and Technology Development Corpn, LTD, vs. 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.

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 12.10.1994 stating, inter alia, that the allegations made in the 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 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 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.

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.

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, 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 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 of the case, we make no order as to costs.

JUDIS