M/S. Sicagen India Ltd. vs Mahindra Vadineni on 8 January, 2019

Equivalent citations: AIR 2019 SUPREME COURT 502, AIRONLINE 2019 SC 20, 2019 CRI LJ 1307, 2019 ALLMR(CRI) 1263, (2019) 1 ALD(CRL) 632, (2019) 1 ALLCRILR 847, (2019) 1 CIVILCOURTC 299, (2019) 1 CRILR(RAJ) 272, (2019) 1 ICC 815, (2019) 1 NIJ 238, (2019) 1 NIJ 652, (2019) 1 RAJ LW 822, (2019) 1 RECCRIR 788, (2019) 1 SCALE 429, (2019) 2 BANKCAS 25, (2019) 2 KER LJ 22, 2019 (2) SCC (CRI) 59, (2019) 2 UC 735, (2019) 4 CRIMES 360, 2019 (4) SCC 271, (2019) 73 OCR 760, 2019 ACD 265 (SC), 2019 CALCRILR 3 494, 2019 CRILR(SC MAH GUJ) 272, 2019 CRILR(SC&MP) 272, AIR 2019 SC(CRI) 484

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Bench: Indira Banerjee, R. Banumathi

NON-REPORTABL

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos. 26-27 OF 2019
(@ SPECIAL LEAVE PETITION (CRL.)NOS. 6789-6790 OF 2015)

M/S. SICAGEN INDIA LTD. ..

VERSUS

MAHINDRA VADINENI & ORS. ..

J U D G M E N T

R. BANUMATHI,J.

Leave granted.

2. These appeals arise out of the judgment and orders dated 14.11.2011 in Crl.O.P.No. 20401 of 2011 and 15.12.2014 in Crl.O.P.S.R.No. 55782 of 2014 passed by the High Court of Judicature at Madras in and by which the High Court has quashed the criminal complaints filed by the appellant - complainant under Section 138 of the Negotiable Instruments Act.

3. For convenience, the facts in C.C.No. 4029/2010 (Crl.O.P. No. 20401 of 2011) are referred to. Case of the appellant-complainant is that they had business dealings with the respondents and in the course of business dealings, the respondents had issued three cheques viz.

Reason: 1. Cheque 316693 dated 20.07.2009 for Rs.1,44,362/-

2. Cheque 316663 dated 30.07.2009 for Rs.4,26,400/-

3. Cheque 316692 dated 10.08.2000 for Rs.4,48,656/- The three cheques were presented for collection and the same were dishonoured and returned with the endorsement "insufficient funds". The appellant-complainant had issued first notice to the respondent(s) on 31.08.2009 demanding the repayment of the amount. The cheques were again presented and returned with the endorsement "insufficient funds". The appellant had issued a statutory notice on 25.01.2010 to the respondent(s). Since the cheque amount was not being paid, the appellant-complainant had filed the complaint under Section 138 of the Negotiable Instruments Act based on the second statutory notice dated 25.01.2010.

4. The respondent(s)-accused filed petition before the High Court under Section 482 Cr.P.C. seeking to quash the criminal complaint filed by the appellant-complainant on the ground that the complaint was not filed based on the first statutory notice dated 31.08.2009 and the complaint filed based on the second statutory notice dated 25.01.2010 is not maintainable. The High Court quashed the complaint by holding that "the amount has been specifically mentioned in the first notice and, thereafter, the complainant himself has postponed the matter and issued the second notice on 25.01.2010 and the complaint filed on the same cause of action was not maintainable .

5. We have heard Mr. K.K. Mani, learned counsel appearing on behalf of the appellant as well as Mr. B. Karunakaran, learned counsel appearing on behalf of the respondents.

6. The issue involved whether the prosecution based upon second or successive dishonour of the cheque is permissible or not, is no longer res integra. In Sadanandan's case it was held that while second and successive presentation of the cheque is legally permissible so long as such presentation is within the period of six months or the validity of the cheque whichever is earlier, the second or subsequent dishonour of the cheque would not entitle the holder/payee to issue a statutory notice to the drawer nor would it entitle him to institute legal proceedings against the drawer in the event he fails to arrange the payment. The correctness of the decision in Sadanandan's case was doubted and referred to the larger bench.

7. Three-Judge Bench of this Court in 2013 ((1) SCC 177 MSR Leathers vs. S. Palaniappan and Another held that there is nothing in the provisions of Section 138 of the Act that forbids the holder of the Cheque to make successive presentation of the cheque and institute the criminal complaint based on the second or successive dishonour of the cheque on its presentation. In paragraphs 29 and 33 this Court held as under:

29 It is trite that the object underlying Section 138 of the Act is to promote and inculcate faith in the efficacy of banking system and its operations giving creditability to negotiable instruments in business transactions and to create an atmosphere of faith and reliance by discouraging people from dishonouring their commitments which are implicit when they pay their dues through cheques. The provision was intended to punish those unscrupulous persons who issued cheques for discharging their liabilities without really intending to honour the promise that goes with the drawing up of such a negotiable instrument. It was intended to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case the cheque was dishonoured and to safeguard and prevent harassment of honest drawers. (See Mosaraf Hossain Khan V. Bhagheeratha Engg. Ltd. Reported in (2006) 3 SCC 658; C. C. Alavi Haji v. Palapetty Muhammed reported in (2007) 6 SCC 555 and Damodar S. Prabhu v. Sayed Babalal H. reported in (2010) 5 SCC 663. Having said that, we must add that one of the salutary principles of interpretation of statues is to adopt an interpretation which promotes and advances the object sought to be achieved by the legislation, in preference to an interpretation which defeats such object. This Court has in a lonh line of decisions recognized purposive interpretation as a sound principle for the courts to adopt while interpreting statutory provisions. We may only refer to the decision of this Court in New India Sugar Mills Ltd. v. CST reported in 1963(2) Suppl. SCR 459 = 1963 AIR 1207 wherein this Court observed:

"8. ... It is a recognized rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statue, and which effectuate the object of the legislature. If an expression is susceptible of narrow or technical meaning, as well as a popular meaning the court would be justified in assuming that the legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its power invalid" .....

33. Applying the above rule of interpretation and the provisions of Section 138, we have no hesitation in holding that a prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default which was followed by statutory notice and a failure to pay had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honour their commitments made in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other similar reason. There is in our opinion no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the

> prosecution is deferred till the cheque presented again gets dishonoured for the second or successive time. (underlining added)

8. In the present case as pointed out earlier that cheques were presented twice and notices were issued on 31.08.2009 and 25.01.2010. Applying the ratio of MSR Leathers (supra) the complaint filed based on the second statutory notice is not barred and the High Court, in our view, ought not to have quashed the criminal complaint and the impugned judgment is liable to be set aside.

9. Learned counsel appearing on behalf of the respondent(s), inter alia, raised various points including, that :- (i) the cheques were not issued; (ii) that the amount payable is not legally enforceable debt and (iii) the person who issued cheques whether was in effective control of the management of the respondent(s). All the contentions raised by the respondent are refuted by the learned counsel for the appellant. Since the matter is remitted back to the Trial Court, all contentions raised by the parties are left open to be raised before the Trial Court. The impugned judgment of the High Court is set aside and the appeals are allowed.

10. The Complaint CC No. 4029 of 2010 before the Court of XVIII, Metropolitan Magistrate at Saidapet, Chennai is restored to the file of the Trial Court and the Trial Court shall proceed with the matter in accordance with law after affording sufficient opportunity to both the parties.

11. The respondents are at liberty to make appropriate application before the Trial Court for dispensing with personal appearance and the same be considered by the Trial Court in accordance with law.

.....J.
[R. BANUMATHI]

NEW DELHI
8TH JANUARY, 2019

.....J.
[INDIRA BANERJEE]