Central Bank Of India And Anr vs Saxons Farms And Ors on 7 October, 1999

Equivalent citations: 1999 AIR SCW 3621, 1999 (8) SCC 221, 1999 CRI. L. J. 4571, 2000 CLC 85 (SC), (2000) 1 MAH LJ 366, (2000) 1 ORISSA LR 48, (2000) 1 EASTCRIC 78, (2000) 1 PAT LJR 17, (1999) 6 SCALE 402, 2000 ALL CJ 1 390, (2000) BANKJ 84, (1999) 4 ALLCRILR 366, (2000) 1 CIVLJ 577, (2000) 2 COMLJ 36, (1999) 3 CIVILCOURTC 471, (2000) MAD LJ(CRI) 356, (1999) 35 CORLA 199, (1999) 3 KER LT 484, (1999) 4 CURCRIR 115, 1999 ADSC 8 737, (1999) 26 ALLCRIR 2287, 1999 ALLMR(CRI) 2 1853, 2000 CALCRILR 308, (1999) 3 CHANDCRIC 189, 1999 CRILR(SC&MP) 748, (1999) 8 SUPREME 617, (2000) 1 ANDHLT(CRI) 140, (2000) 1 BANKCLR 184, (2000) 1 BOM CR 239, AIR 1999 SUPREME COURT 3607, (2001) 1 BANKCAS 12, (1999) 98 COMCAS 712, 1999 CRILR(SC MAH GUJ) 748, (2000) 1 BLJ 356, (2000) 1 MADLW(CRI) 203, (2000) 1 MPLJ 149, (1999) 17 OCR 606, (1999) 4 RECCRIR 324, (2000) SC CR R 35, (1999) 39 ALLCRIC 891, (2000) 2 ANDHWR 51, (1999) 4 CRIMES 221, (1999) 8 JT 58 (SC), 1999 SCC (CRI) 1411

Bench: G.T. Nanavati, S.N. Phukan

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           CASE NO.:
Appeal (crl.)  1056-57 of 1999

PETITIONER:
CENTRAL BANK OF INDIA AND ANR.

RESPONDENT:
SAXONS FARMS AND ORS.

DATE OF JUDGMENT: 07/10/1999

BENCH:
G.T. NANAVATI & S.N. PHUKAN

JUDGMENT:
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JUDGMENT 1999 Supp(3) SCR 534 The Judgment of the Court was delivered by PHUKAN, J. Leave granted.

These two appeals are by the complainants against the judgment and order of the learned Single Judge of the High Court of Madhya Pradesh, Gwalior Bench passed in Misc. Crl. Case Nos. 636 and 637 of 1997. By the impugned judgment and order the High Court allowed the petitions filed under Section 482 Crl.P.C. and quashed the criminal proceedings namely case Nos. 172 and 1156 of 1995

pending before the Judicial Magistrate, First Class, Gwalior.

Respondent No. 1, a partnership firm, took a loan of over a crore of rupees from the appellant-bank and towards part re-payment of the above loan, issued three cheques dated 29.3.94, for Rs. 1 lakh, Rs. 2 lakhs and Rs. 39,50,000, All three cheques were presented to the bank for collection but received back by the appellant unpaid on 25.4.94 and 19.6.94 with the remarks "funds insufficient". The appellant bank sent two registered notices dated 2,5.94 and 27.6.94 through the advocate and there was no dispute that the notices were received. All the cheques were again presented to the bank but returned with the same remarks namely "funds insufficient". Thereafter, the appellant-bank approached the Judicial Magistrate First Class by filing two complaints under Section 138 of the Negotiable Instruments Act, 1881 (for short the Act). The Magistrate took cognizance in respect to both the complaints but the High Court quashed the criminal proceedings only on the ground that there was no proper notice as required under Section 138 of the Act.

We have heard the learned counsel for the parties and the short question to be decided is whether there were valid notices as required under Clause (b) of the proviso to Section 138 of the Act.

We extract below the relevant portion of the notices which is same in both the notices :

> "The bouncing of the two cheques is a most serious matter. The said act of issuance of cheques knowing fully well that the same shall not be paid statutes an offence under Section 138 of the Negotiable Instruments Act. As per the provisions of this act my client through this notice informs you that my client shall represent the two cheques again and if the same are returned unpaid, my client shall report the matter to the Police for initiating appropriate criminal action against you all. My client further reserves the right to file criminal case against all of you for the non- payment of the cheques in question and details given above. Kindly arrange to make the payment of the cheques if you intend to avoid the unpleasant action of my client."

Section 138 of the Act, inter alia, provides that 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 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, such person shall be deemed to have committed an offence under the above Section. According to the proviso to the said Section unless the three clauses mentioned therein are fulfilled the provisions of the Section shall not apply. In these appeals we are concerned with Clause (b) which is quoted below :

> "(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"

Though, no form of notice is prescribed in the above Clause (b) the requirement is that notice shall be given in writing within fifteen days of receipt of information from the bank regarding return of the cheque as unpaid and in the notice a demand for payment of the amount of the cheque has to be made.

The object of notice is to give a chance to the drawer of the cheque to rectify his omission and also to protect honest drawer. Service of notice of demand in Clause (b) of the proviso to Section 138 is a condition precedent for filing a complaint under Section 138 of the Act. In the present appeals there is no dispute that notices were in writing and these were sent within fifteen days of receipt of information by the appellant- bank regarding return of cheques as unpaid. Therefore, only question to be examined whether in the notice there was a demand for payment.

The last line to the portion of notice extracted above reads as under :

> "Kindly arrange to make the payment to avoid the unpleasant action of my client." In our opinion it is a clear demand as required under Clause (b) of Section 138.
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> Regarding demand for payment, the High Court was of the opinion that "the intention in the notice was that cheque was being presented again and the applicant/petitioner should arrange the payment on re-presentation of the cheque". The High Court over looked the last line of notice as indicated above and, therefore, erred in holding that there was no demand of payment.
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> A cheque can be presented any number of times to the bank within the period of its validity. In view of the above, appellant-bank had a legal right to re-present the cheques to the bank as indicated in the notices and, therefore, respondents could have arranged payment either through bank or directly to the appellant bank. By not doing so the provision of Section 138 is clearly attracted.
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> In the notices it was stated that on re-presentation of the cheques if returned unpaid, the appellant-bank would report the matter to the police for initiating appropriate criminal action against the respondents. Drawing our attention to the above statement in the notices it is urged on behalf of the respondents that the intention of the appellant-bank was to start police investigation and not to file complaint under Section 138 of the Act.
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> Under Section 142 of the Act, court can take cognizance of an offence punishable under Section 138 only on a complaint in writing made by the payee. Therefore, the police could not have started investigation under Section 138 of the Act. But if a cheque is dishonoured drawer may expose himself to prosecution under various Sections of the Indian Penal Code which are cognizable and police could take up investigation. What was indicated in the notice was that in addition to the legal action by the appellant-bank under the Act, option was kept open for taking action against the respondents under the provisions of Indian Penal Code by informing the police.

Therefore, the contention of learned counsel for the respondents has no force.

For the reasons stated above we hold that notices were valid and proper and, therefore, the High Court erred in holding that there was no proper notice for payment as required under Section 138 of the Act.

In the result, both the appeals are allowed by quashing the impugned judgment and order of the High Court and court below is directed to proceed with the trial in both the complaint petitions.