REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1837 OF 2012
(Arising out of S.L.P. (Crl.) No. 8255 of 2010)

Indra Kumar Patodia & Anr. .... Appellant(s)

Versus

Reliance Industries Ltd. and Ors.. .... Respondent(s)

WITH

CRIMINAL APPEAL No. 1838 OF 2012
(Arising out of S.L.P. (Crl.) No. 9537 of 2010)

J U D G M E N T

P.Sathasivam,J.

1) Leave granted.

2) These appeals are filed against the common final judgment and order dated 17/18.03.2010 passed by the High

1

Court of Judicature at Bombay in Criminal Appeal Nos. 287 and 288 of 2009 whereby the Division Bench held that the complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short "the Act") without signature is maintainable when such complaint was subsequently verified by the complainant.

3) **Brief facts:**

(a) Indra Kumar Patodia and Mahendra Kumar Patodia – the appellants herein are accused in Criminal Complaint being CC No. 1866/SS of 2007 (1866/MISC/1998) filed before the 16th Court of Metropolitan Magistrate, Ballard Estate, Bombay, for the offence punishable under Section 138 read with Sections 141 and 142 of the Act. Respondent No.3 herein is a Company duly registered under the Companies Act, 1956, presently under liquidation and official liquidator has been

appointed by the High Court, which has alleged to have issued the cheques to respondent No.1.

(b) Respondent No.1 is the complainant and the manufacturers of Partially Oriented Yarn (POY) and other textile goods. From time to time, Respondent No. 3 used to place orders for the supply of POY to Respondent No. 1 and had issued 57 cheques between 02.12.1997 to 09.03.1998 for the payment of the same.

(c) The aforesaid cheques were deposited by the complainant on 05.04.1998 and were returned by the Bank on 06.04.1998 with the remark "exceeds arrangement". Pursuant to the same, Respondent No.1 issued a notice dated 16.04.1998 to the appellants and demanded the aforesaid amount for which they replied that they have not received any statement of accounts maintained by the complainant regarding the transactions with the accused. In addition to the same,

Respondent No.3, vide letter dated 29.05.1998, made various claims for the rate difference, discounts etc., in respect of the transactions, however, Respondent No.1 filed a complaint on 03.06.1998 being Complaint No. 1866/SS of 2007 (1866/MISC/1998) under Section 138 read with Sections 141 and 142 of the Act. On 30.07.1998, the Metropolitan Magistrate recorded the verification statement and issued summons against the appellants and respondent No.3 herein.

(d) The appellants preferred an application being C.C. No. 1332/9/1999 before the Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai for recalling the process issued against them. By order dated 28.08.2003, the Metropolitan Magistrate, dismissed the said application.

(e) Challenging the said order, the appellants and respondent No.3 herein filed an application in the Court of Sessions for Greater Bombay at Bombay bearing Criminal

Revision Application No. 749 of 2003. By Order dated 08.10.2004, the Sessions Judge dismissed the said application as not maintainable.

(f) By order dated 26.11.2008, the Metropolitan Magistrate dismissed the complaint and acquitted the accused persons.

(g) Challenging the acquittal of the accused persons, respondent No.1 herein-the complainant, filed appeals being Criminal Appeal Nos. 287 and 288 of 2009 before the learned single Judge of the High Court. The learned single Judge, by order dated 09.07.2009, referred two points for consideration by the larger Bench, viz., (1) In the matter of complaint for the offence punishable under Section 138 of the Act whether the complaint without the signature of the complainant, inspite of verification of complaint, is "*non-entia*" and whether no prosecution can lie on such complaint?; and (2) If answer to point No.1 is negative then whether it is a mere irregularity

and it can be cured subsequently and whether such subsequent amendment would relate back to the date of filing of the complaint or whether it would hit by the Law of Limitation.

(h) By impugned common judgment dated 17/18.03.2010, the Division Bench of the High Court, disposed of the matter by answering point No.1 in the affirmative holding that the complaint under Section 138 of the Act is maintainable and when such complaint is subsequently verified by the complainant and the process is issued by the Magistrate after verification, it cannot be said that the said complaint is "*non-entia*" and the prosecution of such complaint is maintainable. Further, it was held that since the answer to point No.1 was in affirmative, it was not necessary to decide point No.2 and directed to place the appeals for deciding the same on merits.

6

(i) Aggrieved by the said decision, the appellants have filed the above appeals by way of special leave before this Court.

4) Heard Mr. Bhagwati Prasad, learned senior counsel for the appellants and Mr. Uday U. Lalit, learned senior counsel for respondent No.1, Ms. Asha Gopalan Nair, learned counsel for respondent No.2 and Ms. Sangeeta Kumar, learned counsel for respondent No.3.

5) Mr. Bhagwati Prasad, learned senior counsel for the appellants after taking us through the relevant provisions of the Negotiable Instrument Act, 1881, the Code of Criminal Procedure, 1973 (in short 'the Code') and the order of the learned single Judge as well as the reference answered by the Division Bench raised the following contentions:

i) the complaint under Section 141 in respect of dishonour of cheque under Section 138 of the Act without signature of the complainant is not maintainable;

ii) there is no provision in the Act regarding verification. Even otherwise, the verification was signed by the complainant after expiry of the limitation period, hence, the impugned complaint is liable to be rejected; and

iii) inasmuch as the Act is a special Act, it must prevail over procedures provided in the Code.

On the other hand, Mr. Lalit, learned senior counsel for the contesting first respondent-the complainant contended that in the light of the language used in Section 2(d) read with various provisions of the Code and Section 142 of the Act, the complaint, as filed and duly verified before the Magistrate and putting signature therein, satisfies all the requirements. He further submitted that the conclusion of the Division Bench upholding the complaint and the issuance of summons for appearance of the accused are valid and prayed for dismissal of the above appeals.

8

6) We have carefully considered the rival submissions and perused all the relevant materials.

7) From the rival contentions, the only question for consideration before this Court is that whether the complaint without signature of the complainant under Section 138 of the Act is maintainable when such complaint is verified by the complainant and the process is issued by the Magistrate after verification.

8) The word "complaint" has been defined in Section 2(d) of the Code which reads thus:

> "2 (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

Keeping the above definition in mind, let us see the scheme of the statute and the legislative intent in bringing the Act.

9) The Act was amended by Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment Act) 1988 wherein new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated in order to encourage the culture of use of cheques and enhancing the credibility of the instrument. The insertion of the new Chapter and amendments in the Act are aimed at early disposal of cases relating to dishonour of cheques, enhancing punishment for offenders, introducing electronic image of a truncated cheque and a cheque in the electronic form as well as exempting an official nominees director from prosecution under the Act. For our purpose, Section 142 of the Act is relevant which reads thus:

10

"**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;

(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:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

(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."

As pointed out, the controversy in our case, concentrates on construction of Section 142(a) of the Act and in particular phrase "a complaint in writing" employed therein. It provides that notwithstanding anything contained in the Code, no Court shall take cognizance of any offence punishable under Section 138 of the Act except upon a "complaint in writing" made by the payee or as the case may be the holder in due

course of the cheque. The important question in the instant case is what is meant by 'complaint in writing'. Whether complaint should be in writing simpliciter or complaint being in writing requires signature below such writing.

10) The object and scope of Sections 138 and 142 of the Act has been considered by this Court in ***Pankajbhai Nagjibhai Patel*** vs. ***State of Gujarat and Another***, (2001) 2 SCC 595. In that case, Judicial Magistrate of the First Class, after convicting an accused for an offence under Section 138 of the Act sentenced him to imprisonment for six months along with a fine of Rs.83,000/- The conviction and sentence were confirmed by the Sessions Judge in appeal and the revision filed by the convicted person was dismissed by the High Court. When the SLP was moved, the counsel confined his contention to the question whether a Judicial Magistrate of the First Class could have imposed sentence of fine beyond Rs. 5,000/-

in view of the limitation contained in Section 29(2) of the Code. Learned counsel for the respondent contended the decision of this Court in ***K. Bhaskaran*** vs. ***Sankaran Vaidhyan Balan***, (1999) 7 SCC 510 to the effect that power of Judicial Magistrate of First Class is limited in the matter of imposing a sentence of fine of Rs. 5,000/- is not correct in view of the *non obstante* clause contained in Section 142 of the Act. After hearing both the parties, this Court held that Section 138 of the Act provides punishment as imprisonment for a term which may extend to one year or fine which may extend to twice the amount of cheque or with both. Section 29(2) of the Code contains limitation for a Magistrate of First Class in the matter of imposing fine as a sentence or as part of sentence. After quoting Section 29(2) of the Code as well as Section 142 of the Act, this Court has concluded thus:

> "6. It is clear that the aforesaid non obstante expression is intended to operate only in respect of three aspects, and

nothing more. The first is this: Under the Code a Magistrate can take cognizance of an offence either upon receiving a complaint, or upon a police report, or upon receiving information from any person, or upon his own knowledge except in the cases differently indicated in Chapter XIV of the Code. But Section 142 of the NI Act says that insofar as the offence under Section 138 is concerned no court shall take cognizance except upon a complaint made by the payee or the holder in due course of the cheque.

7. The second is this: Under the Code a complaint could be made at any time subject to the provisions of Chapter XXXVI. But so far as the offence under Section 138 of the NI Act is concerned such complaint shall be made within one month of the cause of action. The third is this: Under Article 511 of the First Schedule of the Code, if the offence is punishable with imprisonment for less than 3 years or with fine only under any enactment (other than the Indian Penal Code) such offence can be tried by any Magistrate. Normally Section 138 of the NI Act which is punishable with a maximum sentence of imprisonment for one year would have fallen within the scope of the said Article. But Section 142 of the NI Act says that for the offence under Section 138, no court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the First Class shall try the said offence.

8. Thus, the non obstante limb provided in Section 142 of the NI Act is not intended to expand the powers of a Magistrate of the First Class beyond what is fixed in Chapter III of the Code. Section 29, which falls within Chapter III of the Code, contains a limit for a Magistrate of the First Class in the matter of imposing a sentence as noticed above i.e. if the sentence is imprisonment it shall not exceed 3 years and if the sentence is fine (even if it is part of the sentence) it shall not exceed Rs 5000."

11) It is also relevant to refer a decision of this Court in ***M.M.T.C. Ltd. and Another*** vs. ***Medchl Chemicals and Pharma (P) Ltd. and Another,*** (2002) 1 SCC 234. The question in that decision was whether a complaint filed in the name and on behalf of the company by its employee without necessary authorization is maintainable. After analyzing the relevant provisions and language used in Sections 138 and 142(a) of the Act, this Court held that such complaint is maintainable and held that want of authorization can be rectified even at a subsequent stage. This Court further clarified that the only eligibility criteria prescribed by Section 142 is that the complaint must be by the payee or the holder in due course. This Court held that this criteria is satisfied as the complaint is in the name and on behalf of the appellant-Company. It was further held that even presuming, that initially there was no authority, still the company can, at any

stage, rectify the defect. It was further held that at a subsequent stage the company can send a person who is competent to represent the company and concluded that the complaint could thus not have been quashed on this ground.

12) It is clear that the *non obstante* clause has to be given restricted meaning and when the section containing the said clause does not refer to any particular provisions which intends to over ride but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. In other words, there requires to be a determination as to which provisions answers the description and which does not. While interpreting the *non obstante* clause, the Court is required to find out the extent to which the legislature intended to do so and the context in which the *non obstante* clause is used. We have already referred to the definition of complaint as stated in

Section 2(d) of the Code which provides that the same needs to be in oral or in writing. The *non obstante* clause, when it refers to the Code only excludes the oral part in such definition.

13) According to us, the *non obstante* clause in Section 142(a) is restricted to exclude two things only from the Code i.e. (a) exclusion of oral complaints and (b) exclusion of cognizance on complaint by anybody other than the payee or the holder in due course. Section 190 of the Code provides that a Magistrate can take cognizance on a complaint which constitutes such an offence irrespective of who had made such complaint or on a police report or upon receiving information from any person other then a police officer or upon his own knowledge. *Non obstante* clause, when it refers to the core, restricts the power of the Magistrate to take cognizance only on a complaint by a payee or the holder in due course and

excludes the rest of Section 190 of the Code. In other words, none of the other provisions of the Code are excluded by the said *non obstante* clause, hence, the Magistrate is therefore required to follow the procedure under Section 200 of the Code once he has taken the complaint of the payee/holder in due course and record statement of the complainant and such other witnesses as present at the said date. Here, the Code specifically provides that the same is required to be signed by the complainant as well as the witnesses making the statement. Section 200 of the Code reads thus:

> "**200. Examination of complainant.-** A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:
>
> Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-
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> (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:
Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

Mere presentation of the complaint is only the first step and no action can be taken unless the process of verification is complete and, thereafter, the Magistrate has to consider the statement on oath, that is, the verification statement under Section 200 and the statement of any witness, and the Magistrate has to decide whether there is sufficient ground to proceed. It is also relevant to note Section 203 of the Code which reads as follows:

"203. Dismissal of complaint.- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

It is also clear that a person could be called upon to answer a charge of false complaint/perjury only on such verification statement and not mere on the presentation of the complaint as the same is not on oath and, therefore, need to obtain the signature of the person. Apart from the above section, the legislative intent becomes clear that "writing" does not pre-suppose that the same has to be signed. Various sections in the Code when contrasted with Section 2(d) clarify that the legislature was clearly of the intent that a written complaint need not be signed. For example, Sections 61, 70, 154, 164 and 281 are reproduced below:

> ***"61. Form of summons.***
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> Every summons issued by a court under this Code shall be in writing, in duplicate, signed by the presiding officer of such court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the court.

70. Form of warrant of arrest and duration.

(1) Every warrant of arrest issued by a court under this Code shall be in writing, signed by the presiding officer of such court and shall bear the sea] of the court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. .....

164. Recording of confessions and statements.

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(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect-

281. Record of examination of accused.

(1) Whenever the accused is examined by a Metropolitan Magistrate, the Magistrate shall make a memorandum of the substance of the examination of the accused in the language of the court and such memorandum shall be signed by the Magistrate and shall form part of the record….."

A perusal of the above shows that the legislature has made it clear that wherever it required a written document to be signed, it should be mentioned specifically in the section itself, which is missing both from Section 2(d) as well as Section 142.

14) The General Clauses Act, 1897 too draws a distinction between writing and signature and defines them separately. Section 3(56) defines signature and Section 3(65) defines writing which reads thus:

"In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,-

56. "Sign" with its grammatical variations and cognate expressions, shall, with reference to a person who is unable

> to write his name, include, "mark", with its grammatical variation and cognate expressions,
>
> 65. Expressions referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form,"

Writing as defined by General Clauses Act requires that the same is representation or reproduction of "words" in a visible form and does not require signature. "Signature" within the meaning of "writing" would be adding words to the section which the legislature did not contemplate.

15) In the case on hand, the complaint was presented in person on June 3, 1998 and on the direction by the Magistrate, the complaint was verified on July 30, 1998 and duly signed by the authorized officer of the Company-the complainant. As rightly pointed out by the Division Bench, no prejudice has been caused to the accused for non-signing the complaint. The statement made on oath and signed by the complainant safeguards the interest of the accused. In view of

the same, we hold that the requirements of Section 142(a) of the Act is that the complaint must necessarily be in writing and the complaint can be presented by the payee or holder in due course of the cheque and it need not be signed by the complainant. In other words, if the legislature intended that the complaint under the Act, apart from being in writing, is also required to be signed by the complainant, the legislature would have used different language and inserted the same at the appropriate place. In our opinion, the correct interpretation would be that the complaint under Section 142(a) of the Act requires to be in writing as at the time of taking cognizance, the Magistrate will examine the complainant on oath and the verification statement will be signed by the complainant.

16) It is the contention of Mr. Bhagwati Prasad, learned senior counsel for the appellant that the limitation period

expired on the date of verification and the complaint cannot be entertained. In view of the above discussion, we are unable to accept the said contention.

17) In ***Japani Sahoo*** vs. ***Chandra Sekhar Mohanty***, (2007) 7 SCC 394, in para 48, this Court held that "so far as the complainant is concerned, as soon as he files a complaint in a competent court of law, he has done everything which is required to be done by him at that stage. Thereafter, it is for the Magistrate to consider the matter to apply his mind and to take an appropriate decision of taking cognizance, issuing process or any other action which the law contemplates". This Court further held that "the complainant has no control over those proceedings". Taking note of Sections 468 and 473 of the Code, in para 52, this Court held that "for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of the complaint or initiating

criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a Court".

18) In the light of the scheme of the Act and various provisions of the Code, we fully endorse the above view and hold that the crucial date for computing the period of limitation is the date of filing of the complaint or initiating criminal proceedings and not the date of taking cognizance by the Magistrate. In the case on hand, as pointed out earlier, the complaint was filed on June 3, 1998 which is well within the time and on the direction of the Magistrate, verification was recorded by solemn affirmation by authorized representatives of the complainant and after recording the statement and securing his signature, the learned Magistrate passed an order issuing summons against the accused under Sections 138/142 of the Act.

19) In the light of the above discussion, taking note of various provisions of the Act and the Code which we have adverted above, we hold that the complaint under Section 138 of the Act without signature is maintainable when such complaint is verified by the complainant and the process is issued by the Magistrate after due verification. The prosecution of such complaint is maintainable and we agree with the conclusion arrived at by the Division Bench of the High Court. Consequently, both the appeals fail and are dismissed.

.....J.
(P. SATHASIVAM)

.....J.
(RANJAN GOGOI)

NEW DELHI;
NOVEMBER 22, 2012.