It has been held by the Hon'ble Supreme Court in **M S R Leathers vs. S. Palaniappan**, Criminal Appeal Nos. 261-264 of 2002, decided on September 26, 2012 , that neither Section 138 nor Section 142 or any other provision contained in the Act forbids the holder or payee of the cheque from presenting the cheque for encashment on any number of occasions within a period of six months of its issue or within the period of its validity. It was also held that there is, nothing in the proviso to Section 138 or Section 142, to oblige the holder/payee of a dishonoured cheque to necessarily file a complaint even when he has acquired an indefeasible right to do so. It was held as under:

SUPREME COURT OF INDIA

Bench

Hon'ble Mr Justice R.M. Lodha,
Hon'ble Mr Justice T.S. Thakur and
Hon'ble Mr Justice Anil R. Dave, **JJ.**

Per T.S. Thakur, J.

> "14. Presentation of the cheque and dishonour thereof within the period of its validity or a period of six months is just one of the three requirements that constitutes cause of action within the meaning of Sections 138 and 142(b) of the Act, an expression that is more commonly used in civil law than in penal statutes. For a dishonour to culminate into the commission of an offence of which a court may take cognizance, there are two other requirements, namely, (a) service of a notice upon the drawer of the cheque to make payment of the amount covered by the cheque and (b) failure of the drawer to make any such payment within the stipulated period of 15 days of the receipt of such a notice. It is only when the said two conditions are superadded to the dishonour of the cheque that the holder/payee of the cheque acquires the right to institute proceedings for prosecution under Section 138 of the Act, which right remains legally enforceable for a period of 30 days counted from the date on which the cause of action accrued to him. There is, however, nothing in the proviso to Section 138 or Section 142 for that matter, to oblige the holder/payee of a dishonoured cheque to necessarily file a complaint even when he has acquired an indefeasible right to do so. The fact that an offence is complete need not necessarily lead to launch of prosecution especially when the offence is not a cognizable one. It follows that the complainant may, even when he has the immediate right to

institute criminal proceedings against the drawer of the cheque, either at the request of the holder/payee of the cheque or on his own volition, refrain from instituting the proceedings based on the cause of action that has accrued to him. Such a decision to defer prosecution may be impelled by several considerations but more importantly it may be induced by an assurance which the drawer extends to the holder of the cheque that given some time the payment covered by the cheques would be arranged, in the process rendering a time consuming and generally expensive legal recourse unnecessary. It may also be induced by a belief that a fresh presentation of the cheque may result in encashment for a variety of reasons including the vicissitudes of trade and business dealings where financial accommodation given by the parties to each other is not an unknown phenomenon. Suffice it to say that there is nothing in the provisions of the Act that forbids the holder/payee of the cheque to demand by service of a fresh notice under clause (b) of proviso to Section 138 of the Act, the amount covered by the cheque, should there be a second or a successive dishonour of the cheque on its presentation.

20. The expression cause of action appearing in Section 142(b) of the Act cannot therefore be understood to be limited to any given requirement out of the three requirements that are mandatory for launching a prosecution on the basis of a dishonoured cheque. Having said that, every time a cheque is presented in the manner and within the time stipulated under the proviso to Section 138 followed by a notice within the meaning of clause (b) of proviso to Section 138 and the drawer fails to make the payment of the amount within the stipulated period of fifteen days after the date of receipt of such notice, a cause of action accrues to the holder of the cheque to institute proceedings for prosecution of the drawer.

21. There is, in our view, nothing either in Section 138 or Section 142 to curtail the said right of the payee, leave alone a forfeiture of the said right for no better reason than the failure of the holder of the cheque to institute prosecution against the drawer when the cause of action to do so had first arisen. Simply because the prosecution for an offence under Section 138 must on the language of Section 142 be instituted within one month from the date of the failure of the drawer to make the payment does not in our view militate against the accrual of multiple causes of action to the holder of the cheque upon failure of the drawer to make the payment of the cheque amount. In the absence of any juristic principle on which such failure to prosecute on the basis of the first default in payment should result in forfeiture, we find it difficult to hold that the payee would lose his right to

institute such proceedings on a subsequent default that satisfies all the three requirements of Section 138.

23. Coming then to the question whether there is anything in Section 142(b) to suggest that prosecution based on subsequent or successive dishonour is impermissible, we need only mention that the limitation which Sadanandan Bhadran s case (supra) reads into that provision does not appear to us to arise. We say so because while a complaint based on a default and notice to pay must be filed within a period of one month from the date the cause of action accrues, which implies the date on which the period of 15 days granted to the drawer to arrange the payment expires, there is nothing in Section 142 to suggest that expiry of any such limitation would absolve him of his criminal liability should the cheque continue to get dishonoured by the bank on subsequent presentations. So long as the cheque is valid and so long as it is dishonoured upon presentation to the bank, the holder s right to prosecute the drawer for the default committed by him remains valid and exercisable. The argument that the holder takes advantage by not filing a prosecution against the drawer has not impressed us. By reason of a fresh presentation of a cheque followed by a fresh notice in terms of Section 138, proviso (b), the drawer gets an extended period to make the payment and thereby benefits in terms of further opportunity to pay to avoid prosecution. Such fresh opportunity cannot help the defaulter on any juristic principle, to get a complete absolution from prosecution.

24. Absolution is, at any rate, a theological concept which implies an act of forgiving the sinner of his sins upon confession. The expression has no doubt been used in some judicial pronouncements, but the same stop short of recognizing absolution as a juristic concept. It has always been used or understood in common parlance to convey "setting free from guilt" or "release from a penalty". The use of the expression "absolution" in Sadanandan Bhadran s case (supra) at any rate came at a time when proviso to Section 142(b) had not found a place on the statute book. …"

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