

Dhanraj Vs. Ashok Kumar

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Court : Madhya Pradesh

Decided On : Mar-21-2013

Appellant : Dhanraj

Respondent : Ashok Kumar

Advocate for Def. : Shri. Ramesh Tamrakar

Advocate for Pet/Ap. : Shri. Ajay Kumar Jain

Judgement :

1 M.

Cr.C.No.14676/12.

21.3.2013 .

Shri Ajay Kumar Jain, learned counsel for the applicant.

Shri Ramesh Tamrakar, learned counsel for the respondent.

Although this case is listed today for admission and consideration of stay application but in view of available factual matrix of the matter with the consent of the parties this petition is heard finally.

ORDER

(ORAL) The applicant/ accused has filed this petition under Section 482 of Cr.P.C.

being aggrieved by the order dated 28.9.2012 passed by 1st Additional Sessions Judge, Gadarwara District Narsinghpur in Criminal Revision No.104/12 affirming the order dated 2.9.2009 passed by JMFC Gadarwara in Criminal Case No.1076/2009, whereby in a private complaint filed by the respondent for prosecution of the applicant the cognizance of the offence of Section 138 of Negotiable Instruments Act has been taken.

Petitioner's counsel after taking me through the papers placed on record and the averments of the petition argued that the impugned cognizance was taken by the trial Court without following the procedure prescribed under Section 200 and 202 of Cr.P.C.

As such neither the statement of complainant nor his witnesses were recorded and only on the basis of some affidavit of complainant the cognizance of the aforesaid offence was taken, which is not permissible under the law.

In continuation he said that as per averments of the complaint the statutory notice to make the demand of sum of the cheque, as alleged was sent through the registered post 2 but the same was not served on the applicant as reflected from the acknowledgment due receipt but taking into consideration such acknowledgment due receipt the trial Court has taken the cognizance, such approach of the trial Court is not sustainable under the law and prayed for quashment of the impugned complaint by admitting and allowing this petition.

On the other hand responding aforesaid arguments by justifying the impugned order Shri Ramesh Tamrakar, learned counsel of the respondent argued that the approach of the trial Court being based on proper appreciation of the evidence available on the record so also in compliance of the provision of Section 145 of Negotiable Instruments Act as well as in accordance with provisions of presumption regarding service of notice through registered post on addressee enumerated under the General Clauses Act, Post Office Act and Evidence Act do not require any interference and prayed for dismissal of this petition.

Having heard keeping in view their arguments advanced, I have carefully gone through the papers placed on record along with the above mentioned acknowledgment due receipt (Ann.

P.2.). True it is that the impugned order has been passed by the trial Court by taking into consideration the affidavit of the complainant filed under Section 145 of the Negotiable Instruments Act and not after recording the statement of the complainant as well as his witnesses under Section 200 and 202 of Cr.P.C.

but I am of the considered view that the provision of Section 145 of Negotiable Instruments Act is enacted by the Legislature to hold early trial of the case and when such affidavits are filed in support of the 3 complaint then in that circumstance it was not necessary for the trial Court to record the statement of the complainant and his witnesses under Section 200 and 202 of Cr.P.C.

So, I am not agree with the argument advanced by the petitioner's counsel in this regard.

Hence, such argument is hereby failed.

So far other objection of the petitioner's counsel regarding service of the registered notice is concerned, it is apparent fact on record that statutory notice to make the demand of the sum of the disputed cheque was sent by the complaint through registered post within the prescribed limitation.

True it is that as per acknowledgment due receipt the same is not signed by the applicant but signed by some other person.

It is undisputed fact on record that such registered notice was sent on a correct address of the applicant, as the same is also mentioned on the array of the petition by the applicant himself and to hold the service of notice send through registered post some provisions of the nature of presumption have been enacted by the Legislature in the above mentioned enactment referred by the respondent counsel.

Out of them Section 27 of the General Clauses Act is read as under : Section 27 in The General Clauses Act

27.

[Meaning of service by post.- Where any [Central Act].or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression" serve" or either of the expressions" give" or" send" or any other expression is used, then, unless a different intention appeaRs.the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is 4 proved, to have been effected at the time at which the letter would be delivered in the ordinary couRs.of post.

Apart the aforesaid the provision of Clause (e) of Section 114 of Evidence Act being relevant is read as under :

114.

The Court may presume-- (e) that judicial and official acts have been regularly performed; Besides the aforesaid under Clause (c) of Section 3 of Post Office Act the following provision has has been enacted : (c) The delivery of a postal article at the house or office of the addressee, or to the addressee or his servant or agent or other person considered to be authorized to receive the article according to the usual manner of delivering postal articles to the addressee, shall be deemed to be delivery to the addressee.

In view of the above mentioned provisions if the case at hand is examined then prima-facie it is apparent that above mentioned statutory notice regarding demand of sum of the cheque has been sent by the complainant within the prescribed period on the correct address of the applicant and concerning official of the post office has placed the same for its delivery at the correct address of the applicant.

Hence, at this stage contrary to the aforesaid provision of presumption no inference could be drawn in the matter by invoking the inherent power of this Court enumerated under Section 482 of Cr.P.C.

In the aforesaid premises, at present I have not found any substance or circumstance in the matter requiring any interference by this Court under Section

482 of Cr.P.C.

Hence, this petition is 5 hereby dismissed.

However, it is made clear that the petitioner shall be at liberty to rebut the aforesaid presumption as stated in the petition at the stage of trial, as the presumption is always rebutted by adducing the evidence.

The petition is dismissed as indicated above, with liberty aforesaid.

(U.

C.Maheshwari) Judge k

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