

D.N. Kaol Vs. Arvind Pathak

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Court : Madhya Pradesh

Decided On : Oct-04-2013

Appellant : D.N. Kaol

Respondent : Arvind Pathak

Judgement :

M.Cr.C.No.6104/2012 04.10.2013 Shri Vijay K.

Pandey, Advocate for the applicant.

Shri G.S.Rajput, Advocate for the respondent.

Heard on admission.

The applicant has challenged the order dated 17.4.2012 passed in Criminal Revision No.10/2012 by the learned Additional Sessions Judge and Special Judge, Chhattarpur whereby the order dated 2.2.2011 passed by the learned CJ.Chhattarpur in Complaint Case No.158/2011 was confirmed by which the complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as N.I.Act) was registered.

The brief facts of the case are that the respondent has filed a criminal complaint against the applicant that the applicant issued a cheque in favour of the respondent which was dishonoured.

After giving a notice of demand the applicant did not pay the amount of the cheque.

Hence the complaint was registered vide order dated 2.2.2011 by the CJ.Chhattarpur.

The Criminal Revision filed by the applicant was also dismissed.

The learned counsel for the applicant has given his stress on the agreement of sale of the vehicle to show that the agreement took place between the respondent and one Brijendra Prasad Kol.

Therefore, the applicant was not at all responsible for payment of any sum to the respondent, hence no criminal complaint could lie against the applicant.

On the other hand, the learned counsel for the respondent has submitted that if the applicant was not connected with the transaction, then why he has issued a cheque in favour of the respondent.

It is admitted that the cheque was issued by the applicant from his own cheque book by appending his own signature, and therefore it is for him to establish before the trial Court that he was not involved in the transaction.

After considering the submissions made by the learned counsel for the parties and looking to the facts and circumstances of the case, at present it is not to be seen as to whether the applicant was involved in the transaction of sale or not.

At present, it is admitted that the cheque was issued by the applicant by appending his own signature on the cheque and it was dishonoured.

Under such circumstances, an offence under Section 138 of N.I.Act is made out against the applicant prima facie.

It is for the applicant to prove that he was not bound to pay any sum to the respondent.

Such type of evidence cannot be considered at this stage where the applicant has issued the cheque in favour of the respondent.

At this stage it cannot be said that the complaint filed by the respondent is not maintainable.

Consequently, the petition filed by the applicant D.N.Kaol under Section 482 of Cr.P.C.cannot be accepted.

It is hereby dismissed at motion stage.

A copy of this order be sent to the trial Court for information and compliance that interim stay granted vide order dated 17.7.2012 is automatically vacated, and therefore the trial Court shall proceed with criminal complaint No.158/2011.

(N.K.Gupta) Judge Ansari

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