Sanjeev Kumar Vs. State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Dec-08-2017

Appellant : Sanjeev Kumar

Respondent : State of Jharkhand and Anr

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr.M.P. No.151 of 2009 ------ Sanjeev Kumar .... Petitioner Versus 1. The State of Jharkhand 2. Krishnendu Kumar Chatterjee .... Opp. Parties CORAM : HON'BLE MR. JUSTICE B.B. MANGALMURTI For the Petitioner : Ms. Madhulika Dasgupta, Advocate Mr. Rajesh Kumar, Advocate For the State : Mr. Mukesh Kumar, A.P.P. ------ 03/08.12.2017 Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. Instant application has been filed for quashing the order dated 09.07.2008 passed by Sessions Judge, Dhanbad in Criminal Revision No.155 of 2008 dismissing the revision by confirming the order passed by the court of Rama Kant Mishra, Judicial Magistrate, Dhanbad in C.P. Case No.1780 of 2007 where the court has dismissed the complaint petition which was filed under Section 138 of the Negotiable Instruments Act as also under Sections 406 and 420 of the Indian Penal Code.

3. The short fact of the case is that the complainant has let out his premise to the accused Krishnendu Kumar Chatterjee on rent situated at Bank More, Dhanbad,

on monthly rent of Rs.3500/- starting from the month of January, 2006. The accused paid Rs.3500/- as advance for the month of January, 2006 and thereafter started residing in the premise with his family. Later on, accused did not make payment of monthly rent and on several requests he issued a cheque of Rs.20,000/- bearing No. 231164 of IDBI Bank on 01.07.2006 payable to the complainant against the payment of arrear of rent. The further case is that the said cheque was returned unpaid with endorsement of Insufficient Fund. Thereafter, complainant informed the accused who paid the cheque amount in installment by cash. Subsequently the rent of the premises was enhanced to Rs.4000/- per month from the month of January, 2007, as agreed by the parties. Accused again issued a cheque of Rs.45,000 in favour of complainant 2 bearing no.103741 dated 15.05.2007 of IDBI Bank. When this cheque was presented by the complainant, it again returned unpaid with the endorsement Insufficient Fund on 19.05.2007. Since the accused was having knowledge that he has no balance in his Bank account nor he has taken any step to honour the cheque and arrange the payment as required under Section 138 of the Negotiable Instruments Act, so he has committed an offence under Section 138 Negotiable Instruments Act as well as under Sections 406 and 420 of the Indian Penal Code. Accused was duly informed about the dishonour of the cheque upon which accused assured that it will be positively paid on its representation before the Bank. On his persuasion, the complainant again presented the same cheque before the Bank but it was again returned unpaid on 28.06.2007. Thereafter, complainant served a notice of demand through his lawyer vide notice dated 26.07.2007 which was sent by courier. After receipt of notice of demand, accused approached the complainant and promised to make payment of the amount of dishonoured cheque as soon as possible within a week so the complainant waited for the payment. Accused took time but also replied to the notice denying all the liabilities and debt. The accused made false promise only for the purpose to cause delay and to avoid any criminal case to be filed under Negotiable Instruments Act. The intention of accused was to cause wrongful gain and to cause wrongful loss to the complainant. As the accused has misappropriated the rent amount, he has committed criminal breach of trust and hence committed offence under Section 138 of the Negotiable Instruments Act and under Sections 406 and 420 of the Indian Penal Code also.

Therefore, prayer was made to take cognizance under the provisions of the Negotiable Instruments Act as taking cognizance is not a bar as per the explanation under Section 142(b) of the Negotiable Instruments Act.

4. Counsel for the petitioner submitted that the Magisterial 3 court has considered the first date of dishonour i.e. 19.05.2007 and counted the period of 30 days and found that the notice dated 26.07.2007 issued by the complainant was much beyond the prescribed period of 30 days, so he has not found prima facie case to summon the accused under Section 138 of Negotiable Instruments Act. He also submitted that the court below has not taken into consideration that the same cheque was subsequently presented before the Bank which was again dishonoured on 28.06.2007 and the date should have been counted from the subsequent dishonour of the cheque. He relied on the decision in the case of MSR Leathers Versus S. Palaniappan and another reported in 2013(10) SCC568where it has been held that prosecution on the basis of cause of action arising out of subsequent presentation of cheque is tenable as long as conditions mentioned under Section 138 are satisfied. He further submitted that the Magisterial court has also not considered the allegations under Sections 406 and 420 of the Indian Penal Code. Lastly, he has submitted that even the revisional court has not considered the subsequent date of dishonour of the cheque and has only considered that the notice was given after two months from the date of information that the cheque was not encashed. The revisional court also considered that since no prayer in the complaint petition for condoning the delay in giving notice or reasonable explanation for giving notice after the statutory period was made and as per Para 11 of the complaint petition original cheque issued by the accused has been lost by the applicant and only the xerox copy of the cheque was placed, had dismissed the revision application.

5. The learned A.P.P. appearing on behalf of the State submitted that the case of MSR Leathers Versus S. Palaniappan and another (Supra) is not applicable in this case as three conditions enumerated under Section 138 of Negotiable Instruments Act has not been fulfilled as even after including the subsequent date of dishonor 4 of cheque i.e. 28.06.2007 the complaint petition was filed beyond the statutory period and was filed after the delay of three months i.e. 26.10.2007. Therefore, the

conditions were not fulfilled. In reply to the court question the complainant admitted that after the first bouncing of the cheque, he has not given Vakalatan notice. He had sent the notice after the second bouncing of the cheque. He further submitted that no rent agreement was executed and the original cheque was lost, so he has submitted the photocopy of the cheque in the court. Learned A.P.P. pointed out that he has not deposed in support of the Paragraph 11 of the complaint petition where it has been mentioned that he had informed the local police in writing and in support of it neither he has given oral evidence nor documentary evidence in support of it. Lastly, he has submitted that due to these reasons his prayer has been refused by both the courts below.

6. Considering the above submissions of the parties and on perusal of the materials available before this Court as well as the ratio of the case of MSR Leathers (Supra) it appears that the date of first bouncing of cheque on first occasion was 19.05.2007 and bouncing of same cheque on the second occasion was 28.06.2007 whereas the notice was issued on 26.07.2007 and finally the complaint petition was filed on 26.10.2007. In the case of MSR Leathers (Supra) in Paragraph 6 the Court has held as under:-

6. Accordingly, the matter was placed before a larger Bench. Their Lordships, while deciding the said question, noticed that the proviso to Section 138 stipulates following three distinct conditions precedent, which must be satisfied before dishonor of the cheque can constitute an offence and becomes punishable:

12. The first condition is that the cheque ought to have been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. The second condition is that the payee or the holder in due course of the cheque, as the case may be, ought to make a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. The third condition is that the drawer of such a cheque should have failed to make payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice. (SCC p. 188,

para 12). 5 Fulfilment of those three conditions constitutes an offence under Section 138 and it can then be said that an offence under the said section has been committed by the person issuing the cheque.

7. The Court has found that the fulfilment of all these three conditions constitute an offence under Section 138 of the Negotiable Instruments Act and in the present case these three conditions have not been fulfilled even if the dates are counted from the subsequent dishonor of the cheque. From the enquiry witness, the court has not found any ingredients with regard to Sections 406 and 420 of the Indian Penal Code in absence of any rent agreement and/or in absence of original cheque which is claimed to have been dishonored by the Bank.

8. In the above circumstances and in view of above discussions, instant application is dismissed. (B.B. Mangalmurti, J.) Anit/R.S.