

Gopal Vs. State of Maharashtra and Others

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Court : Mumbai Nagpur

Decided On : Jan-28-2015

Judge : S.B. Shukre

Appeal No. : Criminal Application (APL) No. 710 of 2014

Appellant : Gopal

Respondent : State of Maharashtra and Others

Judgement :

Oral Judgment:

1. Heard learned counsel for the applicant and learned counsel for the Non-applicant Nos.2, 4 and 5 and learned Additional Public Prosecutor for the Non-applicant No.1. The Non-applicant No.3 is only a formal party as he has not challenged the order of the trial Court by filing a revision application before the Additional Sessions Judge and, therefore, I do not find it necessary to hear him.

2. Admit.

3. Heard finally with consent of the parties appearing before the Court.

4. By this application, the applicant has challenged the common order dated 30th September, 2014, passed in Criminal Revision No.142/2014 and Criminal Revision No.143/2014 by the Additional Sessions Judge-5, Nagpur.

5. By the impugned order, the learned Additional Sessions Judge-5, Nagpur, relying upon the law laid down by the Hon'ble Apex Court in the case Dashrath Rupsing Rathod vs. State of Maharashtra and another, reported in (2014) 6 SCC 129, quashed the order passed in Summary Criminal Case No.4261/2012 on 19th March, 2012 by the trial Court thereby issuing process to the Non-applicant Nos.3 to 5 and also directing the trial Court to pass a suitable order in view of the law declared by the Hon'ble Apex Court in the said case of Dashrath Rupsing Rathod.

6. I find myself in agreement with the submission of the learned counsel for the applicant that when Revisional Court finds that in view of law clarified by the Hon'ble Apex Court in the case of Dashrath Rupsing Rathod that the trial Court does not have jurisdiction to entertain or take cognizance of the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 for the reason that the cheque in question has been dishonoured at some other place i.e Delhi in the present case, the Revisional Court would not have jurisdiction to quash the order of issuance of process, which was when passed was within the jurisdiction of the trial Court. Therefore, one part of the impugned order relating to quashing of the order of issuance of process would have to be found as against the law declared by the Hon'ble Apex Court and as such it would deserve to be quashed and set aside.

7. So far as remaining part of the impugned order is concerned, it being in consonance with the law laid down in the afore stated case of Dashrath Rupsing Rathod, it will have to be maintained and confirmed.

8. At this stage, learned counsel for the Non-applicant Nos.2, 4 and 5 submits that the Non-applicant Nos.2, 4 and 5 would be left high and dry if the order of issuance of process is maintained as even if these Non-applicant Nos.2,4 and 5 desire to challenge the same before the appropriate forum, now, the question of delay in filing revision application before the appropriate forum would arise and, therefore, he submits that liberty should be given to these Non-applicant Nos.2, 4 and 5 to challenge the order of issuance of process before the appropriate forum.

9. I do not think it necessary to make any observation in this regard, as it would always be open for these Non-applicants to submit before the appropriate forum

that there have been subsequent developments in this matter for which they may not be held accountable.

10. In this view of the matter, the application deserves to be partly allowed and it is allowed partly accordingly.

11. The direction of quashing the order of issuance of process dated 19.3.2012 given by the Additional Sessions Judge-5, Nagpur is hereby quashed and set aside.

12. The remaining part of the impugned order pertaining to direction given by the Revisional Court to the trial Court for passing suitable order after considering the judgment of the Hon'ble Apex Court in the case of Dashrath Rupsing Rathod is hereby confirmed.

13. Application is disposed of in these terms.

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