

Sonu Kumar Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Nov-07-2014

Judge : Ranjana Pandya

Appeal No. : Criminal Revision No. 4853 of 2009

Appellant : Sonu Kumar

Respondent : State of U.P. and Another

Judgement :

Ranjana Pandya, J.

1. This revision has been preferred against the order dated 4.9.2009 passed by the Judicial Magistrate, Court No. 1, Ghaziabad in Complaint Case No. 4000 of 2009, M/s Shdes-king Vs. Shoe-King and others, summoning the revisionist under Section 138 of the Negotiable Instruments Act, Police Station Sihani Gate, District Ghaziabad.

2. Brief facts of the complaint are that the complainant/opposite party no. 2 filed a complaint before the court concerned under Section 138 Cr.P.C. The complainant filed his affidavit as evidence under Section 200 Cr.P.C., and in inquiry under Section 202 Cr.P.C., he submitted the original Cheque No.578556 amounting to Rs.15,00,000/- dated 27.5.2009, bank memo of P.N.B. by which the cheque was dishonoured, bank memo of his bank, namely, the South Indian Bank Ltd., carbon

copy of the legal notice dated 20.6.2009, receipts of speed post and U.P.C., and the reply submitted by the revisionist.

3. The learned lower court, after perusal of all the evidence on record, summoned the accused under Section 138 of the Negotiable Instruments Act, vide order dated 4.9.2009, against which order the revisionist has come up in the present revision.

4. I have heard learned counsel for the parties and the learned A.G.A.

5. Perusal of the record shows that the cheque was dishonoured by the Bank on 1.6.2009 and information regarding dishonour of cheque was received on 2.6.2009. The notice was sent on 20.6.2009 to the accused which was received on 23.6.2009 and the complaint was filed on 28.7.2009.

6. It has been argued by the counsel for the revisionist that the complaint is time barred and the Magistrate has committed error in taking cognizance thereon.

7. In reply counsel for the opposite party no. 2 has contended that the plea of the revisionist cannot be looked into at the time of summoning of the accused. Besides he has said that the complaint is well within time.

8. Perusal of the Negotiable Instruments Act, 1881 shows that when a cheque is dishonoured, notice shall be given to the accused to pay the amount and the court shall take cognizance of the offence within one month on which date the cause of action arises. For this, the payee or holder of the cheque has to make a demand for payment of the said amount of the money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid or the drawer of such cheque fails to make payment to the payee within 15 days.

9. Thus, 15 days time had to be given to the accused to pay money and 30 days time was allowed to the holder of the cheque to file the complaint. Thus, according to the provisions of the Negotiable Instruments Act, the complaint was well within time.

10. Counsel for the revisionist has also argued that the amount mentioned in the cheque was not a legal recovery debt, hence, it could not be recovered. Besides, he has also argued that part of the cheque is hand written and part is typed, hence, it cannot be looked into.

11. It is well settled law that the defence of the accused cannot be looked into at the time of summoning of the accused or framing of the charge.

12 The counsel for the revisionist has further argued that the Ghaziabad court had no jurisdiction to pass the summoning order. In support, he has relied upon Dashrath Rupsingh Rathod Vs. State of Maharashtra and another, JT 2014 (9) SC 1981. Counsel for the opposite party and State have also relied upon the law laid down by the Apex Court in Dashrath Rupsingh Rathod Vs. State of Maharashtra and another (supra).

Para 20 of the Judgment reads as under:-

"20. We are quite alive to the magnitude of the impact that the present decision shall have to possibly lakhs of cases pending in various Courts spanning across the country. One approach could be to declare that this judgment will have only prospective pertinence, i.e. applicability to Complaints that may be filed after this pronouncement. However, keeping in perspective the hardship that this will continue to bear on alleged accused/respondents who may have to travel long distances in conducting their defence, and also mindful of the legal implications of proceedings being permitted to continue in a Court devoid of jurisdiction, this recourse in entirety does not commend itself to us. Consequent on considerable consideration we think it expedient to direct that only those cases where, post the summoning and appearance of the alleged Accused, the recording of evidence has commenced as envisaged in Section 145(2) of the Negotiable Instruments Act, 1881, will proceeding continue at that place. To clarify, regardless of whether evidence has been led before the Magistrate at the pre-summoning stage, either by affidavit or by oral statement, the Complaint will be maintainable only at the place where the cheque stands dishonoured. To obviate and eradicate any legal complications, the category of Complaint cases where proceedings have gone to the stage of Section 145(2) or beyond shall be deemed to have been transferred

by us from the Court ordinarily possessing territorial jurisdiction, as now clarified, to the Court where it is presently pending. All other Complaints (obviously including those where the accused/respondent has not been properly served) shall be returned to the Complainant for filing in the proper Court, in consonance with our exposition of the law. If such Complaints are filed/refiled within thirty days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time barred."

13. According to the aforesaid law laid down by the Apex Court, the complaint has to be returned to the complainant for filing it before the appropriate court. In the result, the revision has no force and is liable to be dismissed.

14. The revision is, accordingly, dismissed.

15. The learned trial court shall return the complaint to the complainant in the light of the law laid down by the Hon'ble Apex Court in Dashrath Rupsingh Rathod Vs. State of Maharashtra and another (Supra) for presenting it before the appropriate court since the evidence has not yet been led before the Magistrate.

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