

Pawan Kumar Vs. Kamunja Fields Pvt. Ltd. and Another

Pawan Kumar Vs. Kamunja Fields Pvt. Ltd. and Another

SooperKanoon Citation : sooperkanoon.com/338828

Court : Mumbai

Decided On : Oct-23-1991

Reported in : 1993(3)BomCR608; [1994]80CompCas439(Bom)

Judge : B.U. Wahane, J.

Acts : Negotiable Instrument Act, 1881 - Sections 138

Appeal No. : Criminal Application No. 526 of 1991

Appellant : Pawan Kumar

Respondent : Kamunja Fields Pvt. Ltd. and Another

Advocate for Def. : Chandurkar, Adv.

Advocate for Pet/Ap. : Kasat, Adv.

Judgement :

B.U. Wahane J.

1. By this application under section 482 of the Criminal Procedure Code, the applicant/accused, Shri Pawankumar Agrawal, seeks a direction from this court to quash the proceedings pending in the court of Chief Judicial Magistrate, Amravati, in a Regular Criminal Case No. 233 of 1989 and quash and set aside the order dated December 12, 1989, issuing process.

2. It is not disputed that the applicant/accused owes some amount to non-applicant No. 1. It is also disputed that the accused/applicant had issued four cheques for different amounts on June 30, 1989, July 15, 1989, and on July 23, 1989.

3. Before proceeding with the discussion, Shri Kasat, learned counsel for the applicant, did not press the validity of the notice under section 138 of the Negotiable Instruments Act and the proceedings under sections 420 and 471 of the Indian Penal Code. The submissions of Shri Kasat, learned counsel for the applicant, are very restricted and he formulated the issue as :

4. Whether the cause of action survives or the offence is committed after the representation of the same cheque which was earlier dishonoured

5. According to the applicant, he issued four cheques as under :

Serial Cheque Amount Date

No. No. (Rs.)

1. 1691041 1,10,467 30-6-1989

2. 1691042 50,160 15-7-1989

3. 1691043 84,000 23-7-1989

4. 1691044 56,233 30-7-1989

These cheques were presented by the non-applicant in the Bank of Maharashtra, Jawahar Road Branch, Amravati, on the due dates and all these cheques were dishonoured. Though the cheques were dishonoured no action was taken by the non-applicant, i.e., issuing notice under the provisions of section 138 of the

Negotiable Instruments Act and even after non-compliance no case was instituted against the applicant/accused.

6. Subsequently, according to the applicant/accused, all the four cheques referred to above were again presented in the Bank of Maharashtra, Jawahar Road Branch, Amravati, on November 6, 1989, and again they were dishonoured. Therefore, the notice was issued and the complaint was filed on November 30, 1989, against the applicant/accused under section 138 of the Negotiable Instruments Act and under sections 420 and 471 of the Indian Penal Code.

7. Shri Kasat, learned counsel for the applicant/accused, submitted that as the non-applicant has failed to take any action against the applicant/accused when all the four cheques were dishonoured earlier, on presentation of those cheques again on November 6, 1989, no cause of action is revived.

8. There is specific averment in para 8 of the complaint to the effect that 'looking to all these facts and circumstances, the complainant approached the accused in the first week of November, 1989, and demanded the outstanding amount due to it from him and upon which the accused instructed the complainant to re-present the abovesaid four cheques mentioned in para 3 hereinabove, on November 6, 1989. The said cheques when presented, were returned dishonoured on November 6, 1989, itself because the amount of money standing to the credit of the accused in his account was insufficient to honour the said cheques'.

9. According to Shri Kasat, learned counsel for the applicant/accused, he denied the allegations by replying the notice.

10. To substantiate the submissions, Shri Kasat, learned counsel for the applicant/accused, relied upon the case of Kumaresan v. Ameerappa [1991] 1 KLT 893: [1992] 74 Comp Cas 848. Their Lordships observed that (at page 851 of 74 Comp Cas) :

'From the scheme of the provisions in Chapter XVII of the Act, two features loom large. The first is that more than one cause of action on the same cheque is not contemplated or envisaged. The second is that, institution of prosecution cannot

be made after one month of the cause of action. If more than one cause of action on the same cheque can be created, the consequences would be that the same drawer of the cheque can be prosecuted and even convicted again and again on the strength of the same cheque. The Legislature cannot be imputed with the intention to subject a drawer of cheque to repeated prosecutions and convictions on the strength of one cheque.'

11. There is no dispute regarding the observations made by the Lordships in the case cited supra. However, the facts of the case which was before their Lordships and the present case are altogether different. In the case which was before their Lordships, the same cheque was presented by the drawer and on both the occasions it was dishonoured. From the facts, it is not clear whether before presenting the cheque on the second occasion, the party was apprised and the person who issued the cheque has informed that they can present the cheque in the bank. However, in the case before me in para 8 of the complaint, reproduced earlier, it is specifically submitted by the complainant that in the first week of November, 1989, he demanded the dues from the applicant/accused and he directed to re-present all the four cheques in the bank. Therefore, the cheques were presented a second time and dishonoured. Considering this fact, the case cited by Shri Kasat, learned counsel for the applicant/accused, is of no assistance to him.

Thus, the only question that remains is whether in the month of November, 1989 (in the first week) the non-applicant/complainant approached and demanded the money from the applicant/accused and the applicant/accused directed him to re-present all the four cheques or not is a question to be determined at the time of recording the evidence. This aspect cannot be an issue to be decided under section 482 of the Criminal Procedure Code. Thus, there is no substance in the submission of Shri Kasat, learned counsel for the applicant/accused. The application is dismissed.