

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

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Court : Allahabad

Decided On : Mar-07-2000

Reported in : 2000(3)AWC2429

Judge : B.K. Rathi, J.

Acts : Negotiable Instrument Act, 1881 - Sections 138, 141 and 142; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 200 and 202

Appeal No. : Crl Revision No. 263 of 1998 and Crl. Misc. Application No. 1515 of 2000

Appellant : Rajendra Kumar

Respondent : State of U.P. and Another

Advocate for Def. : A.G.A. and ;S.U. Khan, Adv.

Advocate for Pet/Ap. : Dharmendra Singhal, Adv.

Judgement :

B. K. Rathi, J.

1. In Criminal Revision No. 263 of 1998, the request has been made to set aside the order dated 25.9.1998 passed in Criminal Revision No. 172 of 1998 by the Special Judge/Additional Sessions Judge, Aligarh. in Criminal Misc. Application

No. 1515 of 2000, the request has been made that Illrd Additional Chief Judicial Magistrate. Aligarh be directed to decide Case No. 1464 of 1996 pending before him, expeditiously. Both the matters are relating to the same offence and therefore they are being disposed of by a common judgment.

2. I have heard Sri Dharmendra Singhal, learned counsel for the revisionist in Criminal Revision No. 263 of 1998 and Sri S. U. Khan, learned counsel for the opposite parties and also Sri S. U. Khan, learned counsel for the petitioners in Criminal Misc. Application No. 1515 of 2000 and Sri Dharmendra Singhal, learned counsel for the opposite parties.

3. The facts giving rise to these cases are that opposite party No. 2 Pramod Kumar Varshney and his wife Smt. Manorama Devi filed Complaint Case No. 1464 of 1996 under Section 138. Negotiable Instruments Act against revisionist Rajendra Kumar, which is pending in the Court of Illrd Additional Chief Judicial Magistrate. Aligarh. Revisionist Rajendra Kumar appeared in that case and filed objections that there is no sufficient ground to proceed against him. Objections were allowed by the Illrd Additional Chief Judicial Magistrate, Allgarh. by an order dated 27.1.1998 and he cancelled the summoning order of the revisionist. Against that order, opposite party No. 2 and his wife preferred Criminal Revision No. 172 of 1998. which was allowed on 25.9.1998 and the revisionist has been directed to face trial in the above case. Aggrieved by it. revisionist Rajendra Kumar has preferred the present Criminal Revision No. 263 of 1998. The complainants have alleged that opposite party No. 2 is delaying the disposal of the case and, therefore, they filed Criminal Misc. Application No. 1515 of 2000 for direction for early disposal of the said case.

4. According to the complaint, there is a Finn M/s. Pyarey Lal Har Ballabh Das of which Smt. Manorama Devi wife of Pramod Kumar is the sole Proprietor. The complainants are Smt. Manorama Devi and Pramod Kumar Varshney and it is alleged that Pramod Kumar Varshney is the Manager of the Firm. That an account payee cheque dated 12.8.1996 for Rs. 8.02,634.09 was given by the revisionist, which was dishonoured by the Bank on 16.8.1996. That, therefore, the complainants served legal notice dated 27.8.1996. which was received by the

accused, that he did not pay the amount.

5. Three contentions have been raised before me in this revision by Sri Dharmendra Singhal, learned counsel for the revisionist. The first contention is that the complaint has not been filed by an authorised person. Admittedly, the cheque is in the name of the Firm of which Smt. Manorama Devi is the sole Proprietor. Therefore, she is holder in due course of the cheque. However, the complaint has been filed by her as well as her husband Pramod Kumar Varshney. Therefore, Pramod Kumar Varshney is an unnecessary party and has been unnecessarily impleaded as complainant. The complaint can be filed only by payee or the holder of the cheque in due course as provided by Section 142(a) of the Act. The complaint, therefore, cannot be said to be filed by an unauthorised person as Smt. Manorama Devi is also one of the complainant, who is holder of the cheque in due course. However, Pramod Kumar Varshney has been unnecessarily impleaded as complainant, but the complaint cannot be rejected on this ground.

6. In this connection, it is also contended that on behalf of the revisionist that statement of the complainant under Section 200, Cr. P.C. should have been recorded, but no statement of Smt. Manorama Devi has been recorded. That the statement of her husband has been recorded and on its basis, the revisionist has been summoned. I have considered the arguments. It is mandatory that the statement of the complainant should be recorded in the complaint case under Section 200, Cr. P.C. Pramod Kumar Varshney cannot be deemed to be the complainant and his statement under Section 200, Cr. P.C. could not be recorded. Therefore, the procedure adopted by the learned IIIrd Additional Chief Judicial Magistrate, Allgarh, is illegal and the summoning order is fit to be set aside. However, for this reason the complaint cannot be dismissed as Smt. Manorama Devi is also the complainant. The trial court should record the statement of Smt. Manorama Devi under Section 200, Cr. P.C. and thereafter, he may proceed with the case in accordance with law.

7. The next contention of the learned counsel for the revisionist is that the complainant is a sole Proprietor of the Firm and the complaint has not been filed in accordance with the provisions of Section 141 of the Negotiable Instruments Act.

This contention is without merit. it is a proprietary Firm of Smt. Manorama Devi and therefore, she is authorised to file a complaint on behalf of the Firm.

8. The last contention of the learned counsel for the revisionist is that the date of service of notice has not been mentioned in the complaint. Only it is mentioned that the notice was sent through counsel on 27.8.1996, which has been received by the opposite parties. it is contended that the date of receipt of notice should be mentioned in the complaint. Learned counsel for the revisionist has drawn my attention to the provisions of Section 142 of the Negotiable Instruments Act. Clause (b) provides that the complaint can be made within one month of the date on which the cause of action arose under clause (c) of the proviso of Section 138. Clause (c) of the proviso of Section 138 provides that in case the drawer of such cheque falls to make the payment of the said amount of money to the payee within 15 days of the receipt of the notice only, then the offence under Section 138 of the Negotiable Instruments Act is made out. Therefore, the offence under Section 138 of the Negotiable Instruments Act is complete. if the amount of cheque is not paid within fifteen days of the receipt of the notice and not by the dishonour of the cheque. it is. therefore, contended that without service of the notice, the offence is not complete and the limitation for filing the complaint is one month from the date of service of the notice, under clause (b) of Section 142, N.I. Act. No date of service of notice has been mentioned and therefore, the complaint is not maintainable. The date of service of notice is a necessary ingredient of the complaint, to show that the same has been filed within the prescribed time, therefore, the complaint is liable to be rejected.

9. I have considered the arguments and is of the view that the same cannot be accepted. Criminal Procedure Code does not prescribe any form of the complaint though in second schedule other proformas have been given. it is nowhere prescribed that the date of cause of action should be mentioned in the complaint. Therefore, it cannot be accepted that it is necessary for the complainant to mention the date of service of the notice. The accused may plead that the complaint is barred by time and, therefore, the same is liable to be dismissed and may show that the notice was not served on him or the complaint was not filed within one month of the date of service of notice, or that the notice was not sent

within 15 days of the receipt of Information by complainant from the bank regarding return of the cheque as unpaid, if the accused plead any of these facts, then it will be a question of fact to be decided by the trial court after the evidence.

10. In view of the above, it is not mandatory to mention in the complaint the date of service of the notice. The complaint cannot be rejected on this ground as well.

11. In Criminal Misc. Application No. 1515 of 2000 the only prayer is that the trial court be directed to dispose of the above case expeditiously. The aggrieved person is entitled to the expeditious disposal of his grievance. The case is also very old. Therefore, this petition is fit to be allowed.

12. Accordingly, Criminal Revision No. 263 of 1998 is allowed in part and the order of the revisional court dated 25.9.1998 passed in Criminal Revision No. 172 of 1998 is set aside. However, the summoning order of the accused is also quashed. The trial court shall record the statement of the complainant Smt. Manorama Devt under Section 200, Cr. P.C. and if consider proper also record evidence under Section 202, Cr. P.C. and thereafter shall proceed with the case afresh in accordance with law. However, the case shall be decided expeditiously.