

Shamsul Islam Vs. 16th Additional District Judge and ors.

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Court : Allahabad

Decided On : Jul-10-2002

Reported in : 2002(3)AWC2468A; 2002CriLJ4564

Judge : B.K. Rathi, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138 and 139

Appeal No. : Crl. M.W.P. No. 2145 of 2002

Appellant : Shamsul Islam

Respondent : 16th Additional District Judge and ors.

Advocate for Def. : P.K. Srivastava, A.G.A.

Advocate for Pet/Ap. : K.K. Tripathi, Adv.

Disposition : Petition dismissed

Judgement :

B.K. Rathi, J.

1. This is a petition to quash the orders Annexures-13 and 14 dated 25.11.1999 and 20.3.2002 respectively of the petition passed by A.C.M.M., Kanpur Nagar and Additional Sessions Judge, Kanpur Nagar.

2. I have heard Sri K. K. Tripathi, learned counsel for the petitioner and Sri P. K. Srivastava, learned counsel for O.P. No. 3 and the A.G.A.

3. In this case, it is admitted that there was business transaction between parties and a cheque dated 26.3.1994 for Rs. 1,13,816 was given to O. P. No. 3 by the petitioner and the O. P. No. 4. The cheque was dishonoured by the Bank on 22.8.1984 and, therefore, the complaint was filed under Section 138 , N. I. Act against the petitioner as well as against O. P. No. 4. However, the complaint against O. P. No. 4, who joined in issuing the cheque with the petitioner, have been dismissed and the revision filed against that order has also been dismissed. The said order has become final and the complaint is now proceeding against the petitioner only. The petitioner applied for recall of the summoning order for offence under Section 138, N, I. Act which was rejected by the Magistrate concerned by order dated 25.11.1999 Annexure-13 to the petition. The revision filed by the petitioner has also been dismissed on 20.3.2002 by order Annexure-14 to the petition.

4. As said above, it is admitted that there was business transaction between the parties and the leather was supplied. Cheque was issued by the petitioner and the O.P. No. 4 jointly.

5. It is contended by the learned counsel for the petitioner that in subsequent transaction, the entire amount has been paid and no amount is due. This fact cannot be decided in petition under Section 482, Cr. P.C. There is presumption that the amount was due and it was for the petitioner to prove that the debt was already discharged as provided by Section 139, N. I. Act. Therefore, it is the matter of evidence and proceedings cannot be quashed on this ground by this Court.

6. The cheque admittedly was dishonoured by the Bank. The notice as required by law has been given within time and the complaint was also filed within time.

7. The entire facts were considered by the revisional court in detail in its order dated 20.3.2002 and I agree with its findings.

8. After considering the arguments of the learned counsel for the parties, I do not find any ground to quash the criminal proceedings. The fact that the proceedings of the case against opposite party No. 4 has been quashed is not at all material and cannot be a ground for quashing the proceedings against the petitioner who has also signed the cheque.

9. The petition is without merit and is accordingly dismissed.

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