Krishna Kumar Vinod Kumar and ors. Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Sep-24-2003

Reported in : I(2005)BC181

Judge : K.N. Sinha, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 204; Negotiable Instruments Act, 1881 - Sections 138

Appeal No. : Crl. Revn. No. 291(D), 292(D), 293(D), 294(D), 295(D) and 296(D) and 1963 etc. of 2002

Appellant : Krishna Kumar Vinod Kumar and ors.

Respondent : State of U.P. and anr.

Advocate for Def. : Sunil Kumar, A.G.A.

Advocate for Pet/Ap. : Rajiv Gupta and ; Dilip Kumar, Advs.

Disposition : Revision dismissed

Judgement :
ORDER

K.N. Sinha, J.

1. The above revision petitions have been filed against the judgment and order dated 2.11.2002 passed by the Additional Sessions Judge, Court No. VIII, Bulandshahr in Criminal Revision Nos. 190/2002, 201/2002, 209/2002, 215/2002, 216/2002, 217/2002 and 255/2002, arising out of Complaint Case Nos. 55/2001,54/2001,56/2001,57/2001,58/ 2001, 53/2001 and 59/2001, respectively filed by respondent No. 2 against the present revisionists.

2. The brief facts, giving rise to the present revisions, are that respondent No. 2 filed a complaint against the revisionists under Section 138, Negotiable Instruments Act, 1881 (hereinafter referred to as Act) before the A.C.J.M., Court No. 3. Bulandshahr. The Magistrate, after recording the statement of complainant and the witnesses, passed order summoning the accused. The accused-revisionists appeared before the Magistrate and filed objection against the summoning order dated 14.5.2001. The Magistrate allowed the said objection and set aside the summoning order vide his order dated 30.4.2002. The respondent No. 2, complainant, filed the above revisions before the Sessions Court. Bulandshahr and all the revisions were allowed, setting aside the order dated 30.4.2002, directing the revisionists to appear before the Court of Magistrate for further proceedings.

3. The present revisions have been filed on the ground that lower Revisional Court has committed error of law in holding that notices under Section 138 of the Act were valid notice. The provisions of Section 138 of the Act lay down that cause of action arises when the payee makes a demand for payment of the said amount of money, by giving a notice, in writing to the drawer of the cheque, within fifteen days of the receipt of information by him, from the Bank regarding dishonour of the cheque. In the notice under question the date of dishonour of cheque is 12.11.2000 and its information is 14.11.2000. Therefore, a notice, of demand of dishonour of a cheque ought to have been given within 15 days from the date of such dishonour of the cheque. In the present case, the notice was given on 21.12.2000, which is beyond the period of 15 days from 14.11.2000. Thus the notice was invalid and complaint cannot proceed. The learned Sessions Court has taken an erroneous view against the established position of law.

4. The respondent No. 2 filed a short counter affidavit on the ground firstly, that the Magistrate has no power to recall the summoning order in view of the pronouncement of Full Bench case of Ranjeet Singh and Ors. v. State of U.P. and Ors., 2000(1) JIC 399. It was further deposed that according to the provisions of Section 138 of the Act only a notice has to be sent by the holder of cheque for making a demand for the payment of amount of money and in the present case the demand notice is said to be sent to the accused persons within the said period. It is nowhere disputed that cheques were issued by the accused and notice should not be construed in a narrow technical way without examining the substance of the matter. The dale was mentioned incorrectly in the notice and no prejudice has been caused to the accused.

5. The rejoinder affidavit was filed by Sri Vinod Kumar on the ground that in the notice the manipulation has been made by making correction but the said correction was not made in the notice sent to accused-revisionists. In the notice received by the accused-revisionists, the date of presentation of cheque is given as 12.11.2000 and the date of receiving information of dishonour of the cheques has been given as 14.11.2000. The copy of the original notice was filed along with the application for recalling of the summoning order. The accused was within their rights in filing the objection against the summoning order as laid down in the case of K.C. Mathew v. State of Kerala, 1991(4) JT 464 and Ajai Mehra and Anr. v. Durgesh Babu and Ors.,(2002) 9 SCC 709. The application for recall of summoning order is therefore, maintainable in the eye of law. It has been further submitted that the deponent received notice in which it was mentioned that the cheque was produced before the Bank on 12.11.2000 and information of dishonour was received on 14.11.2000. Computing this period, it is apparent that the notice dated 20.12.2000 is much after the expiry of the period of 15 days from receiving the information of dishonor of cheque, i.e. 14.11.2000. Therefore, such notice does not fulfil the mandatory requirement of law and it is invalid notice whereupon prosecution cannot be launched under Section 138 of the Act. The Sessions Court has wrongly taken the view that it was only due to mistake that wrong date has been mentioned in the notice.

6. I have heard the learned Counsels for the parties and perused the affidavit, counter-affidavit, rejoinder affidavit and the orders and judgments in the Courts below.

7. So far as the position regarding filing of the objection against the summoning order is concerned, the accused approached the Magistrate for the discharge after the order for summoning accused was passed. This apart, after considering the Full Bench decision of this Court and the decision of the Apex Court has held that the Magistrate has power to recall the summoning order and discharge the accused. [Smt. Swarna Manjal v. State of and Ors., II (2000) BC 618=IV (2000) CCR 184=2000(41) ATC 524].

8. Thus so far as (he contention of the learned Counsel for the respondent No. 2 is concerned, it is not substantiated in law and the Magistrate was within his jurisdiction to entertain an objection against the summoning order.

The next point, which comes for consideration, is as to whether the notice would become invalid by mentioning a wrong date in the notice. The copy of the notice filed with this revision shows that the cheque was presented on 12.11.2000 and information of its being dishonoured, was received on 14.11.2000, the notice is dated 20.12.2000. In view of Section 138 of the Act, the cheque has to be presented to the Bank within a period of six months from (he date on which it is drawn or within the period of its validation, whichever is earlier. The payee or the holder of the cheque shall make demand for the payment of such amount by giving a notice in writing to the drawer of the cheque, within 15 days of the receipt of information by him, from the Bank, regarding the return of the cheque, as unpaid. In case, drawer of the cheque fails to make out payment of money to the payee within 15 days after receipt of the said notice, only then action will be taken for punishment. On the strength of this provision in Section 138 of the Act, learned Counsel for the revisionists has submitted that as the date of dishonour of the cheque has been given as 14.11.2000, (he notice must have been issued within 15 days from the date of dishonour of the cheque. The present notice is dated 20.12.2000, which is after about 36 days, hence the said notice is not in accordance with the provisions of the Act and invalid. The learned Counsel for the

revisionists further argued that on the strength such notice no prosecution can proceed and the Magistrate was right in recalling of the summoning order. As against this argument, learned Counsel for the respondent No. 2 has submitted that it has been only a clerical error and he corrected the same in the notice when filed in the Court. The Revisional Court has observed, in its judgment, that the copy of the notice, which has been filed by the complainant, show's that at page No. 2 the word NOVEMBER has been scored out and in its place DECEMBER has been mentioned. The Court has also observed that the date 12.11.2000 and 14.11.2000 have been scored out and at their place 12.12.2000 and 14.12.2000 have been substituted. The Court has also observed that the complainant has brought this fact in its statement under Section 200, Cr.P.C. that the cheque was presented before the Bank on 12.12.2000 and information for dishonour was received on 14.12.2000 and it was only a typing error in the notice sent to accused and by that typing error month NOVEMBER was typed in place of DECEMBER and accordingly these dates were also wrongly typed as 12.11.2000 and 14.11.2000. The notice was sent to accused as it is, without any correction, but it was corrected when the same was filed along with the complaint.

10. The learned Counsel for the parties placed reliance on Rajneesh Aggarwal v. Amit J. Bhalla, AIR 2001 SC 518. In this case, some mistake had occurred in giving the notice and the Apex Court held that the notices cannot be construed in a narrow technical way without examining the substance of the matter. On the facts of that case, Amit Bhalla, Director of the Company had signed the cheque and the notice under Section 138 of the Act was issued to Sri Amit Bhalla, Director of the said Company. The objection was raised that cheques were issued by the Company and the notices should have been given to the Company, not to Sri Amit Bhalla, Director. The Hon'ble Apex Court held that the object of issuing notice indicating the factum of dishonour of the cheques, is to give an opportunity to the drawer to make the payment within 15 days, so that it will not be necessary for the payee to proceed against in any criminal action, even though the Bank dishonoured the cheques. It was immaterial that notices were given to Amit Bhalla, Director of the Company and not to the Company.

11. Learned Counsel for the revisionists relied upon a case A. C. Raj v. M. Rajan, 1991 Cri.LJ.1939, in which it was held that notice should not be vague and the amount should be clear. On the facts of that case the cheque was issued for Rs. 40,000/- and the demand was made of the amount including interest without specifying the rate of interest. It was held that as the amount was not clear, the notice was illegal. This judgment of Kerala High Court does not hold good in view of pronouncement of Hon'ble the Apex Court in M/s. United Credit Ltd., Calcutta v. M/s. Agro Sales India and Ors., JT 2000(10) SC 289, in which it was held that notice cannot be said invalid merely because it contains some amount towards interest and cost separately after indicating the amount covered by the cheque which stood bounced.

12. As held in the case of Rajneesh Aggarwal (supra) the Court has not to construe the notice in a narrow technical way without examining the substance of the matter. Section 138B of the Act lays down that the demand for payment should be made by giving a notice in writing to the drawer of the cheque within 15 days of receipt of information by him from the Bank regarding the return of the cheque as unpaid. This section, if considered along with the above observation of the Apex Court, the result would be that the date material is the date of information of dishonour of the cheque and if there is some clerical error, the substance of the notice has to be seen in a wider campus. In this connection, it would be necessary to revert back to the contents of the notice. Paragraphs 4, 5 and 6 of the notice are very important in order to see the correct facts. These paras are quoted below:

(4) That after receipt of the cheque aforesaid my client deposited it in the account of the firm in Indian Bank branch City Bulandshahr in Current A.C. No. 139/1 on 29.11.2000.

(5) That now on 30.11.2000 my client has been informed by the Indian Bank, Bulandshahr that cheque issued by you addressee No. 3 on behalf of addressee No. I has been dishonoured due to insufficient funds in the account of the firm and the Bank has returned the cheque to my client with this endorsement.

(6) That when the Bank informed my client regarding dishonour of the cheque then my client told you all the addressees about dishonour of the cheque then you all

asked my client to present the cheque again at any time in second week of November 2000. So believing the promises of you addressees my client deposited the cheque aforesaid in his Account aforesaid in the Bank aforesaid on 12.11.2000 for clearing and collection but the Indian Bank branch City Bulandshahr where the cheque was deposited again informed my client on 14.11.2000 that cheque aforesaid has been dishonoured due to insufficient funds in the account of you addressee No. 1 of this notice and the Bank returned the cheque to my client with this endorsement.'

13. Para 4 of the said notice says that the cheque was deposited in the Indian Bank on 29.11.2000. Para 5 of the notice says that on 30.11.2000 M/s. Satya Swaroop Mahavir Prasad, respondent No. 2, received information about the dishonour of the cheque. If para 6 of the notice is read along with paras 4 and 5 of the notice it would be very much clear that the month and date mentioned in para 6 arc due to inadvertence and is the typing mistake and not the substantial mistake. Para 6, says that after the cheque being dishonoured (on 30.11.2000) the noticee, i.e. accused-revisionists, asked the respondent No. 2 to present the cheque again in the second week of November. If the cheques were presented on 29.11.2000 and were dishonoured on 30.11.2000, then there can be no question asking the party concerned to present the cheque in the second week of November as the month of November has already expired as per para 5 of the notice. Moreover, this fact is not dependent on the oral evidence only. The slip of the Bank informing the dishonour of the cheque is a document of Bank and it will unfold the entire fact regarding the date of dishonour of cheque.

14. Thus, notice has to be read on the whole and no meaning can be made out by separating one para, specially when the para 6 is related to paras 4 and 5 of the notice.

15. Hyper-technical view should not be taken when the material is there on record to reveal the substance of the notice. In the present case, if para 6, of the notice is read along-with paras 4 and 5 of the notice, it would be clear that the contention of the respondent No. 2 that by the typing mistake, the month November and dates 12.11.2000 and 14.11.2000 were typed in para 6 of the notice.

16. Thus the Revisional Court was not in error in holding that it was only a clerical error and the complainant also stated this fact in his statement under Section 200, Cr.P.C.

17. In result, the revisions lack merit and are hereby dismissed.

The copy of this judgment be placed on revision Nos. 291 /2002, 292 /2002, 293/2002, 294/2002, 295/2002 and 296/2002.