

Rajeev Soni Vs. Indresh Singh

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Court : Madhya Pradesh

Decided On : Jan-19-2007

Reported in : IV(2007)BC284; 2007CriLJ2361; 2007(1)MPLJ571

Judge : B.M. Gupta, J.

Appellant : Rajeev Soni

Respondent : indresh Singh

Disposition : Petition dismissed

Judgement :

B.M. Gupta, J.

1. Heard finally.

2. Being aggrieved with the order D/- 6-12-2006 passed by Special Sessions Judge, Vidisha, in Criminal Revision No. 125/2006, this petition has been preferred on behalf of the petitioner, who is the accused in the original case. Vide impugned order, the learned Sessions Judge has affirmed the order D/- 14-7-2006 passed by J.M.F.C. Vidisha in R.T.No. 1781/2006 wherein the learned Magistrate has rejected an application filed on behalf of the petitioner to call the account papers from the respondent, who is the complainant in the case, which are related to the alleged transaction.

3. Shri Bhagawan Pandey, while drawing attention at the order passed by this Court in the case of Ajay Kumar Bharadwaj v. AnandVijan M.P.W.N.S.N. 131, page 303 (sic) has submitted that calling the account of the respondent is necessary for the case.

4. Undisputedly, the complaint has been filed by the respondent under Section 138 of Negotiable Instruments Act, 1881 which goes as under:

138. Dishonour of cheque for insufficiency, etc., of funds in the account.-- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for (a term of which may be extended to two years), or with fine which may extent to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless--

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, made a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque (within thirty days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or. as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

(Emphasis supplied)

5. On perusal of this provision, it appears that for discharging of any debt or liability when a cheque is drawn and not encashed by bank on account of the reasons mentioned in this section, the person in whose favour the cheque was drawn, after giving due notice, if amount is not paid, can file a complaint against the drawer of the cheque. For the purpose of this provision the following are to be proved.

1. That, the cheque was drawn by the accused.

2. That it was drawn for discharging of any debt or other liability.

3. That it was returned by the bank unpaid on the ground mentioned in the section.

6. Such drawer of the cheque can be punished with imprisonment as provided in the section, subject to--

1. That the cheque was presented in the bank within a period of six months or within the period of its validity.

2. That the payee or the holder of the cheque in due course makes demand of payment of the said amount by giving a notice in writing to the drawer of the cheque within a period of 15 days from the receipt of the information from the bank.

3. That the drawer fails to make the payment of the said amount to the payee within a period of 15 days from the date of the receipt of the notice.

7. It does not appear nor argued that there is any challenge expressed or raised, by the petitioner with regard to the existence of the debt or liability. The same has been observed by the learned Sessions Judge, while passing the impugned order dt. 6th December, 2006, that the petitioner has not disputed the existence of the debt or liability. In these circumstances, the account books are not required to be seen for the just decision of the case. The fact of the case of Ajay Kumar Bharadwaj (supra) were different which is apparent from the following para of the order passed:

The non-applicant, in the cross examination of the evidence, has specifically admitted that he has maintained the account with regard to the supply of milk to the applicants. He has also admitted that his entire account is audited and he pays income tax.

In view of the above admission of the non-applicant, the applicants filed an application under Section 91 of the Code of Criminal Procedure, 1973 for the production of the account maintained by him pertaining to their business transaction for which the cheques are said to have been issued as the same would be necessary for the just decision of the case. The trial Court, by the impugned order, has rejected the application on the ground that the production of account was not necessary.

There is no dispute between the parties that the non applicant has been supplying the milk to the applicants. The non applicants has categorically admitted in his evidence that he has maintained the account, with regard to the supply of milk to them. I, therefore, see no reason as to why the account pertaining to their business transaction for which the cheques are said to have been issued is not necessary for just decision of the case. If the non applicant has, in fact maintained the account, as admitted by him, then, in all fairness, he should not feel shy in producing the same before the Court.

(Emphasis supplied)

8. It is clear that in the aforementioned case, there was a dispute of existence of debt or the liability between the parties with regard to the consideration of the supply of milk and when on this point, the complainant was cross examined, he had admitted the existence of the account maintained by him for supply of milk to the accused. In those circumstances, the another Bench of this Court has observed the requirement of such account which was available with the complainant for the just decision of the case. Here in this case, complainant has not admitted the existence of the books/papers of the account. Facts being different, this observation cannot fruitfully be utilized in favour of the petitioner in this case. In such cases, unless debt or liability is disputed by the accused and existence of the account books/papers has been admitted by the complainant, calling of the same

does not require. Complainant has only to prove that the cheque was drawn, the same was not encashed and thereafter despite notice the amount was not paid to him by the accused. Unless the execution of the cheque or existence of debt or liability is disputed by the accused nothing more is required for the complainant to get the accused convicted.

9. Consequently, there appears no abuse of the process of the Court in existence of the impugned order, hence the petition being devoid of merits is dismissed.

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