

Devendra Kumar Surana Vs. Lalit

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Court : Madhya Pradesh

Decided On : May-03-2002

Reported in : 2002CriLJ4176; 2002(3)MPHT127

Judge : S.L. Kochar, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138; [Limitation Act, 1963](#) - Sections 4 and 5

Appeal No. : Criminal Revision No. 136/2002

Appellant : Devendra Kumar Surana

Respondent : Lalit

Advocate for Def. : None

Advocate for Pet/Ap. : N.K. Dave, Adv.

Disposition : Criminal revision allowed

Judgement :

ORDER

S.L. Kochar, J.

1. This revision has been brought by the applicant before this Court against the order dated 19-9-2001 passed by the learned Third Chief Judicial Magistrate,

Indore in Cr. Case No. 1295/2000.

2. The facts in nut shell are that the non-applicant Lalit Porwal had filed a criminal complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'Act') after dishonour of the cheque issued in his favour by the applicant. The cheque was dishonoured and intimation of the same was given by the Bank of the non-applicant Lalit Porwal on 30-3-2000. He sent a notice as per provision under Section 138 Proviso (b) of the Act on 15-4-2000. The applicant, after appearing before the Court below, submitted an application on 25-1-2001 that the notice was sent after completion of 15 days i.e., 15-4-2000. Therefore, it was barred by limitation and the provision relating to this purpose is mandatory and, hence, the complaint is not maintainable and is liable to be dismissed.

3. The complainant non-applicant submitted before the Trial Court that on 14-4-2000 there was public holiday on account of Ambedkar Jayanti which prevented him to send a notice on the said date. Therefore, he sent the notice on 15-4-2000. Hence, there was no delay in sending the notice.

4. The applicant examined R.L. Upasani, the Public Relation Inspector of Head Post Office, Indore who has testified on 19-9-2001 that though 14-4-2000 was a public holiday because of Ambedkar Jayanti, but for urgent and essential work, the Head Post Office was functioning and the work was also performed. He submitted the photo stat copy of Work Register (Ex. P/1-C).

5. The learned Trial Court has accepted the explanation submitted by the applicant and rejected the application holding that the notice was sent on 15-4-2000 well within time because 14-4-2000 was a public holiday.

6. The contention of the learned Counsel for the applicant is that the provision of Section 4 read with Section 5 of the Limitation Act will not apply in the present case, because there is a specific provision of limitation available in Section 138 of the Act.

7. It is true that in the Act, the specific provision for limitation for sending the notice of demand within fifteen days and it is after the receipt of the information about

dishonour of the cheque by the Bank. In this section, there is no provision for condonation of delay on being shown sufficient cause by the concerned party. Therefore, the question of application of Section 4 read with Section 5 of the Limitation Act would not arise. In the view of this Court, the learned Court below has not dismissed the application of the applicant on the ground that as per provision of Section 4 read with Section 5 of the Limitation Act, the non-applicant was able to show sufficient cause for not sending the notice on 14-4-2000. Therefore, no question of consideration of Sections 4/5 of the Limitation Act would arise.

8. The non-applicant could have sent the notice by Courier or by FAX or could have served himself or through his employee on 14-4-2000, because there is no provision in Section 138 Proviso (b) for sending the notice within 15 days by Registered Post. Apart from this, in view of the statement given by the Public Relation Inspector of Head Post Office, Indore on 14-4-2000 the Post Office was functioning for urgent and essential work. Therefore, the non-applicant could have sent the notice by Regd. Post on the said date also. Reference can be made to the judgment rendered by Hon'ble the Supreme Court reported in (SIL Import, USA v. Exim Aides Silk Exporters, Bangalore) AIR 1999 SC 1609.

9. Learned Counsel for the applicant has placed reliance on a judgment rendered by this Court in M.Cr.C. No. 4026/2001 (Naththusingh v. Jaswantsingh) decided on 16-1-2002 = 2002(2) M.P.H.T. 180. In this judgment, it has been held that the provision of Section 138 Proviso (b) of the Act is indispensable and breach of the same would result in the dismissal of the complaint filed by the complainant.

10. In the result, the revision is allowed. The order dated 19-9-2001 is set aside and the application of the applicant is allowed resulting in dismissal of the complaint.