

Rajesh Vs. Manoj

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Court : Madhya Pradesh

Decided On : May-13-2002

Reported in : 2002(4)MPHT509

Judge : S.L. Kochar, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138 and 142

Appeal No. : Criminal Revision No. 305/2002

Appellant : Rajesh

Respondent : Manoj

Advocate for Pet/Ap. : M.L. Bansal, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

S.L. Kochar, J.

1. This revision petition is directed against the order dated 24-1-2002, passed by IASJ, Barwani in Criminal Revision No. 161/2000, setting aside the order dated 15-4-2000, passed by the learned Chief Judicial Magistrate, Barwani in Misc. Criminal Case No. 438/98.

2. Non-applicant Manoj has filed a complaint under Section 138 of the Negotiable Instruments Act (for short, 'the Act'). According to the complainant, applicant/accused had issued cheque for Rs. 1 lac in favour of the complainant on 22-5-98. On production of the cheque, the same was dishonoured. The intimation to this effect was given to the accused on 18-6-1998, which was received on 27-6-1998. Thereafter, the complaint was filed on 30-6-1998, Learned Trial Court recorded the statement of the complainant on 28-7-98 and ordered for issuance of notice to the accused.

3. Applicant appeared before the Trial Court and raised an objection that the complaint was pre-mature because the same was filed prior to the period of limitation of 15 days.

4. Learned Trial Court accepted the contention of the applicant/accused and dismissed the complaint. Against this order, the complainant went up in revision and the learned Revisional Court relying on the judgment of the Supreme Court in case of Narsingh Das Tapadia v. Goverdhan Das Partani and Anr. [2000(3) MPLJ 531], set aside the order of the Trial Court holding that taking of the cognizance by the learned Trial Court could be postponed till arising of cause of action. The Supreme Court has ruled in this judgment that mere presentation of complaint in Court at an earlier date need not necessarily render the complaint liable to be dismissed on the ground of same being premature.

5. The contention of the learned Counsel for the applicant is that in the present case, learned Trial Court has examined the complainant under Section 200 of the Code of Criminal Procedure (for short, 'Code') and issued process. Therefore, after taking cognizance, the Trial Court could not keep the complaint pending for 30 days without cause of action would arise for taking cognizance. He relied on a judgment rendered by the Supreme Court in Jamuna Singh and Ors. v. Bhadai Shah (AIR 1964 SC 1541). In this judgment the Supreme Court has held that when on a petition or on a complaint being filed before the Magistrate, the Magistrate applies its mind and examine the complainant under Section 200 of the Code, which shows that the Magistrate has taken cognizance.

6. In the present case, the complaint was filed prior to the period of limitation and the Court had taken cognizance by examining complainant under Section 200 of the Code and also issuing process to the accused. This shows that Court has applied its mind to the fact for the purpose of proceeding further in the matter at the instance of the complainant and also took cognizance.

7. In the case of Narsingh Das (supra) merely the complaint was filed and the same was returned to the complainant on the ground that verification was not signed by the Counsel. The Supreme Court has held that this action of the Magistrate could not be termed to be an action of the Magistrate taking cognizance within the meaning of Section 142 of the Act. The factual and legal situation in the present case are altogether different than the case of the Narsingh Tapadia (supra), therefore, the same will not apply to the present case.

8. In the case on hand, complaint was filed on 30-6-1998. On this date, Court has not taken any action on the complaint, though on this date complaint was premature, being filed without having any cause of action, as the notice was received by the accused/applicant on 27-6-1998. Therefore, the complainant should have awaited for 15 days from this date and only thereafter cause of action would have arisen. Merely filing of complaint, would not mean that cognizance was taken by the Magistrate.

9. In the present case, cognizance taken on 28-7-1998, i.e., after expiry of period of 15 days, after receipt of notice on 27-6-1998 by the applicant. In the judgment relied upon by the Counsel for the applicant in the case of Jamuna Singh and others (supra), it has been held that merely presentation or entertaining of the complaint would not mean that Magistrate has taken cognizance. The same legal position has been discussed in the case of Narsingh Das's case (supra) wherein the Supreme Court has held as under :--

'Compliance of Clause (c) of the Proviso to Section 138 of the Negotiable Instruments Act, enables the Court to entertain a complaint under Section 138 of the Act. Clause (b) of Section 42 of the Act prescribes the period within which complaint can be filed from the date of cause of action arising under Clause (c) of the Proviso to Section 138. No period is prescribed before which the complaint

cannot be filed, and, if filed not disclosing the cause of action in terms of Clause (c) of the Proviso to Section 138, the Court may not take cognizance till the time cause of action arises of the complaint. Mere presentation of the complaint in the Court cannot be said to mean that its cognizance had been taken by the Magistrate. If the complaint is found to be premature, it can await maturity or be returned to the complainant for filing later and its mere presentation at an earlier date need not necessarily render the complaint liable to be dismissed or confer any right upon the accused to absolve himself from the criminal liability for the offence.'

10. In view of the aforesaid factual and legal situation, complaint was premature on 30-6-1998 and it was fully mature on 28-7-1998 when the cognizance was taken by the learned Magistrate. Therefore, the order passed by the Revisional Court is well within the purview of law and need no interference.

11. In the result, this petition is dismissed, having no substance and merit.