

Sanjay Kumar Agrawal Vs. the State of Jharkhand and anr.

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Court : Jharkhand

Decided On : Feb-06-2009

Reported in : 2009CriLJ4716

Judge : Prashant Kumar, J.

Appellant : Sanjay Kumar Agrawal

Respondent : The State of Jharkhand and anr.

Judgement :

Prashant Kumar, J.

Heard the parties.

1. This application is directed against the order dated 13.5.2002 whereby and where under the, court below took cognizance of the offence under Section 138 of the Negotiable Instrument Act and also for quashing the orders by which warrant of arrests and process under Section 82, 83 of the Cr.P.C. has been issued.

2. It is alleged in the complaint petition that the petitioner owe a sum of Rs. 4, 50,000/- to the complainant. It is also alleged that petitioner has returned the said amount by issuance of a cheque of SBI, Deoghar on 6.11.2001. The further case of the complainant is that the said cheques was produced at Dena Bank, Ranchi on 8.11.2001 for encashment, but the same was returned to the complainant

without encashing it with a note 'exceeds arrangement'. It is further alleged that thereafter the complainant had given a notice to the petitioner vide Annexure-(5) and requested him to pay the money within fifteen days. It is further stated that the said notice was sent to the petitioner by registered cover and in support of that receipt of postal department was filed which has been marked as Annexure-6. It is further stated that when the petitioner did not pay the amount within fifteen days of the said notice, the present complaint petition has been filed within one month from that date. It appears that, the court below had enquired into the matter under Section 202 of the Cr.P.C. and come to the conclusion that prima-facie offence under Section 138 of Negotiable Instrument Act is made out accordingly process was ordered to be issued. It further appears that when the petitioner did not appear in the court below, bailable warrant was issued and thereafter non-bailable warrant was also issued and ultimately processes under Section 82, 83 Cr.P.C. was issued against the petitioner.

3. While assailing the impugned order of the court below dated 13.5.2002, it is submitted by the learned Counsel for the petitioner, namely, Sri Kaushik Sarkhel that in the instant case, it is apparent from the complaint petition itself that the notice as provided under Section 138 proviso (b) of the Negotiable Instrument Act, has not been served upon the petitioner and in that view of the matter, the order taking cognizance is bad. It is also submitted that the summons has not been served upon the petitioner and therefore issuance of warrant of arrest as well as process under Section 82, 83 of the Cr.P.C. is illegal and therefore the same, cannot be sustained by this Court.

4. On the other hand, Sri Pandey Neeraj Roy, learned Counsel appearing for the OP. No. 2 submits that in the instant case the notice had already been sent to the petitioner by registered post on 6.12.2001 and the present complaint petition was filed on 15.1.2002 i.e. after more than one month. He further submits that as per Section 27 of the General Clauses Act, there is presumption of service of notice because the notice was sent through registered post. Under the circumstances, he submits that there is no illegality in the order of cognizance.

5. Having heard the submissions, I have gone through the record of the case. In the complaint petition itself, the complainant at paragraph 12 has specifically stated that the demand notice was sent to the petitioner on 6.12.2001 by registered cover and in support of the said, the complainant had also annexed Xerox copy of the postal receipt (Annexure-6). In the complaint petition, the complainant had also annexed photocopy of notice sent to the petitioner which has been marked as Annexure-(5). In the said notice the address of the petitioner was given. The petitioner has not disputed that his address on the said notice was incorrect.

Section 27 of the General Clauses Act, reads as under:

27. Meaning of service by post- Where any[Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, where the expression 'serve' or either of the expressions 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

6. Thus, in view of aforesaid provisions, if it is proved that letter was properly addressed and posted by register post, service shall be deemed to be duly effected. Because all that one can do is to comply with the provisions i.e. to post a pre paid registered notice containing the correct address and once same is done and notice was delivered to the post office, he has no control over it, therefore, it can be presumed to have been delivered to the addressee Under Section 27 of General Clauses Act.

7. I find that complainant sent the notice by registered post on correct address, thus as per Section 27 of General Clauses Act there is presumption that demand notice had been duly served upon the petitioner.

8. Since, in the instant case, the notice was sent on 6.12.2001 and the complaint petition was filed on 15.1.2002 and cognizance was taken on 13.5.2002, I find that

there is no illegality in the impugned order. Hence I am not inclined to interfere with that order.

9. So far, order by which the warrant of arrest and process under Section 82, 83 Cr.P.C. was issued , it appears from perusal of certified copy of order sheet that without service of summon the warrant of arrest and process Under Section 82, 83 Cr.P.C. was issued which is not correct. Hence the same is set aside.

10. However, I direct the petitioner to surrender in the court below on 17.2.2009 and pray for bail, if so advised, which will be considered by the learned court below taking into account that summon had not been served on the petitioner.

Accordingly, this application is disposed of.

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