

Sandeep Kumar Garg Vs. Sandeep Kumar Aggarwal

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Court : Punjab and Haryana

Decided On : Jan-27-2005

Reported in : 2006(1)ALD(Cri)972; IV(2005)BC217; (2005)140PLR486

Judge : M.M. Aggarwal, J.

Acts : Negotiable Instrument Act, 1881 - Sections 138

Appeal No. : Criminal Revision No. 969 of 2001

Appellant : Sandeep Kumar Garg

Respondent : Sandeep Kumar Aggarwal

Advocate for Def. : Party in Person

Advocate for Pet/Ap. : Rajesh Garg, Adv.

Judgement :

M.M. Aggarwal, J.

1. In this case, the petitioner-accused had made an application for discharge in complaint for the offence under Section 138 of the Negotiable Instrument Act. That application was dismissed by the Judicial Magistrate, Panchkula vide order dated 4.4.2001. Against that the order, the present revision petition is filed.

2. The facts of the case are that a complaint for the offence under Section 138 of the N.I. Act was filed by Sandeep Kumar Aggarwal-respondent. It comes out that one cheque of Rs. 30,000/- dated 7.7.1996 was issued by Sandeep Kumar Garg accused/petitioner whereas another cheque of Rs. 6300/- dated 24.5.1996 was issued by Sandeep Kumar and Saroj Garg, petitioners for Accurate Projects & Capital Services Ltd. Both these cheques had been presented in the bank and returned with the observation that the accounts were closed. It also comes out that on 11.11.1996, a notice was issued by the complainant to Sandeep Kumar only for both the cheques to make the payment alongwith interest within 15 days. The complaint was then filed on 2.12.1996.

3. The contention of learned counsel for the petitioner was that the notice had been served on 28.11.1996 and 15 days period had not expired and the complaint could not be filed on 2.12.1996. Further, the contention of the petitioner was that no notice was issued to Saroj Garg nor notice was issued to the company.

4. Case against Saroj Garg is quite different than that of Sandeep Kumar Garg. No notice had been issued to Saroj Garg. The cheque issued by her was not in her individual capacity. It was signed by her alongwith other accused on behalf of the company. One complaint had been filed for both the cheques i.e. for Rs. 30000/- issued by Sandeep Garg in his personal capacity and Rs. 6300/- issued by Sandeep Garg & Saroj Garg for company. Notice had also been issued only to Sandeep Kumar Aggarwal.

5. Under these circumstances, I hold that the case against Saroj Garg cannot proceed and the complaint against her is dismissed.

6. In the notice dated 11.11.1996 issued to Sandeep Kumar Garg, it was clearly stipulated that the payment be made within 15 days. The complaint was filed on 2.12.1996. In the petition, it had been averred that the petitioner was not duly served and it was returned with the remarks 'Not Met' and it was not valid notice.

7. Issuance of notice is necessary. Personal service is not necessary. In view of this, petition filed by Sandeep Kumar Garg is dismissed. It is directed that he will face trial for offence under Section 138 of the Negotiable Instrument Act in

accordance with law.

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