

Manisha Trading Pvt. Ltd. Vs. State and Others

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Court : Delhi

Decided On : Apr-10-2001

Reported in : 2001IVAD(Delhi)485; 2001CriLJ2718; 91(2001)DLT541; 2001(59)DRJ187

Judge : Mr. R.C. Chopra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 256, 397, 401 and 482; [Negotiable Instruments Act, 1881](#) - Sections 138

Appeal No. : Crl.M. (M) No. 519/2000

Appellant : Manisha Trading Pvt. Ltd.

Respondent : State and Others

Advocate for Def. : Mr. Rajiv Garg, Adv.

Advocate for Pet/Ap. : Mr. Manmohan, Adv

Judgement :

ORDER

R.C.Chopra, J.

1. This revision petition under Section 397, 401 read with Section 482 of the code of Criminal Procedure is directed against an order dated 20th October, 2000

passed by learned Metropolitan Magistrate, New Delhi whereby a complaint filed by the petitioner under Section 138 of the Negotiable Instrument Act was dismissed in default on account of absence of the complainant.

2. I have heard Shri Manmohan, learned counsel for the petitioner and Sh. Rajiv Garg, learned counsel for the respondents.

3. According to the petitioner a complaint under Section 138 of the Negotiable Instruments Act filed on its behalf was pending in the Court of Metropolitan Magistrate, New Delhi. On 6th July, 2000 when the petitioner's counsel went to the Court with an exemption application on behalf of the petitioner neither the respondents nor their counsel were there and as such the matter was passed over to be taken up later. When the case was taken up again learned counsel for the petitioner was not there and as such a Court notice was ordered to be issued to the petitioner's counsel for 20.10.2000. It is averred that when learned counsel for the petitioner went to enquire about the next date, it was wrongly noted as 21.10.2000 instead of 20.10.2000. The exemption application moved on behalf of petitioner was kept on record. A copy of the diary of the counsel showing no entry on 20.10.2000 and an entry regarding the case on 21.10.2000 has been annexed as Annexure B to the petition.

4. On 21.10.2000 when counsel for the petitioner went to attend the case, he found that the case had been listed on 20.10.2000 and was dismissed in default on account of the absence of the petitioner. It is submitted that neither any Court notice was issued for 20.10.2000 in spite of specific orders passed on 6.7.2000 nor there were any good and sufficient grounds for dismissal of the complaint under Section 256 of the Code of Criminal Procedure. Learned counsel for the respondents has not filed any reply or affidavit repudiating the petitioner's averments but has opposed the request on the ground that in view of default in appearance on behalf of the petitioner, the learned Trial Court was fully justified in dismissing the complaint.

5. Learned counsel for the petitioner has relied upon judgments in M/s K.& Co. v. M/s Rajinder Steels Ltd. and Ors. 2000 (1) JCC 107, M/s Glaxie Plywood Industries (P) Ltd. v. Vijay Kumar 87 (2000) DLT 152, and M/s Associated Cement

Co. Ltd. Vs . Keshvanand : 1998 CriLJ856 to contend that there are good and sufficient grounds for setting aside the impugned order and restoration of the complaint to its original number.

6. A perusal of the certified copy of the order sheets recorded by learned Metropolitan Magistrate clearly shows that on 6.7.2000 a Court notice was ordered to be issued to petitioner for appearance, but the order sheet dated 20.10.2000, the date on which the complaint was dismissed in default, does not show that any Court notice had been served upon the complainant. The application dated 6.7.2000 moved on behalf of complainant-petitioner for exemption does not find mention in the order sheet dated 6.7.2000 so as to record the presence of the counsel for the petitioner. If the Court had taken notice of this application before recording the order sheet dated 6.7.2000 then it was imperative to make reference of this application in the order sheet. In case this application was moved after the case had been adjourned to 20.10.2000 then also it would have been more expedient to mention about this application on the order sheet by giving a note that counsel for petitioner had appeared and as such there was no need of issuing a Court notice for 20.10.2000. The short order as recorded by the learned Metropolitan Magistrate on this application 'place on record for date fixed' does not show as to at what stage of the case this application was received and what directions were given to counsel for petitioner.

7. The practice of passing short orders on miscellaneous application and not on the order sheet of the case should be avoided in as much as an order sheet is a better document to reflect the day to day proceedings and progress of a case and can be conveniently looked into by the Presiding Judge, parties counsel and ministerial staff of the Court. Miscellaneous orders, if not referred to in the order sheet, sometimes escape attention and result in various complications. Follow up action is also easier in case the orders on miscellaneous applications are referred to in order sheet. For example miscellaneous orders like recall of a witness, exemption, cancellation of NBW etc. may be separate but if these are mentioned in the order sheet of the same date also it becomes easier for all concerned to take notice thereof.

8. In view of the pleas raised by learned Counsel for the petitioner and the facts and circumstances of the case this Court is of the considered view that the default in appearance of the complainant on 20.10.2000 was primarily on account of the wrong noting of the date only. The brief order passed by learned Trial Court on exemption application of petitioner on 6.7.2000 shows that on the said date learned counsel for the petitioner had attended the Court proceedings at same stage. As such there are good and sufficient grounds for setting aside the impugned order of dismissal of the complaint.

9. Accordingly the impugned order dated 20.10.2000 is set aside and complaint No. 395/97 is restored to its original number with the directions that the matter be proceeded further in accordance with law.

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