

Dutt Enterprises Ltd. Vs. State

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Court : Delhi

Decided On : Aug-16-1996

Reported in : 1996IVAD(Delhi)393; 64(1996)DLT815

Judge : S.K. Mahajan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1368 of 1996 and Criminal Miscellaneous Appeal No. 2515 of

Appellant : Dutt Enterprises Ltd.

Respondent : State

Advocate for Pet/Ap. : Rakesh Tikku,; S.K. Agarwal and; H.J.S. Ahluwalia, Advs

Judgement :

S.K. Mahajan, J.

(1) On April 8,1996, after the complaint had been received by the learned Metropolitan Magistrate, it was adjourned to December 9,1996 for preliminary evidence of the complainant. Being aggrieved by this order adjourning the case by eight months only for recording the preliminary evidence, the petitioner has filed this revision petition. Petitioner wants guidelines to be issued to the Trial Courts trying such type of complaints. I have been informed that in cases filed under

Section 138 of the Negotiable Instruments Act, the Metropolitan Magistrates are giving adjournment of 7/8 months for recording of pre-summoning evidence.

(2) By Act 66 of 1988 Chapter Xvii comprising Sections 138 to 142 was inserted in the Negotiable Instruments Act with effect from 1st April, 1989. The object of inserting Chapter Xvii in the Negotiable Instruments Act, 1881 was that where any cheque drawn by a person for the discharge of any liability was returned by the bank unpaid for the reason of insufficiency of the amount on which the cheque was drawn or for the reason that it exceeded the arrangements made by the drawer of the cheque with the bankers for that amount, the drawer of such cheque shall be deemed to have committed an offence. It has also been provided in the said Chapter that it shall be presumed, unless the contrary was proved, that the holder of such cheque received the cheque in the discharge of a liability. Punishment has also been prescribed for the offence under this Chapter.

(3) By giving adjournments of 7/8 months merely for recording of preliminary evidence, in my opinion, the whole purpose of Chapter Xvii of the Negotiable Instruments Act is frustrated. The only thing about the Metropolitan Magistrate has to satisfy himself before issuing summons is that the Negotiable Instruments Act have been satisfied, namely, that the cheque had been presented to the bank within a period of six months from the date of which it was drawn or within the period of its validity whichever was earlier; a demand has been made by the holder of the cheque by giving a notice in writing to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid and the drawer of the cheque failed to make the payment of the said amount of money to the payee, or to the holder in due course of the cheque within fifteen days of the receipt of the said notice. In my opinion, it was not desirable on the part of the Metropolitan Magistrate to give such long adjournments merely for recording of preliminary evidence. It is beyond comprehension that the Metropolitan Magistrate did not have time to record preliminary evidence before 8 months of the case being assigned to them on account of their allegedly being busy in some other matters. Even if the Metropolitan Magistrate is busy in other matters, I do not feel that such a long

adjournment would meet the ends of justice. The Chapter XVII was added in the Negotiable Instruments Act with a view to enhance the acceptability of the cheque in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds or for reasons it exceeds the arrangement made by the drawer. In case, such long adjournments are given only for recording of preliminary evidence, the whole purpose of adding Chapter XVII, in my opinion, stands frustrated.

(4) With a view to avoid giving long adjournments only for recording of preliminary evidence in cases which fall under Section 138 of the Negotiable Instruments Act and with a view to dispose of these complaints without undue delay, the Metropolitan Magistrates must ensure that the preliminary evidence is recorded by them as early as possible on receipt of a complaint under Section 138 of the Negotiable Instruments Act but in no case recording of such evidence will be deferred beyond a period of two months from the date of receipt of the complaint by them.

(5) therefore, allow this petition and direct the petitioner to appear before the Metropolitan Magistrate on 16th September, 1996. As there has already been considerable delay in recording of preliminary evidence in this case, it is directed that the Metropolitan Magistrate shall record preliminary evidence in this case within one month from 16th September, 1996.

(6) A copy of the order be immediately sent to the District & Sessions Judge, Delhi for necessary compliance.

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