

Bhim Singh Vs. Kan Singh

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Court : Rajasthan

Decided On : Nov-25-2003

Reported in : II(2004)BC475; 2004CriLJ4306; RLW2004(1)Raj432; 2004(1)WLC526

Judge : Sunil Kumar Garg, J.

Acts : Negotiable Instrumment Act, 1881 - Sections 138; Code of Criminal Procedure (CrPC) - Sections 482

Appeal No. : S.B. Cr. Misc. Petition No. 823 of 2002

Appellant : Bhim Singh

Respondent : Kan Singh

Advocate for Def. : Sanjay Mathur, Adv.

Advocate for Pet/Ap. : S. Sarupariya, Adv.

Disposition : Petition allowed

Judgement :

Garg, J.

1. This criminal misc. petition under Section 482 Cr.P.C. has been filed by the complainant petitioner with the prayer that the impugned order dated 9.10.2002

passed by the learned Addl. Chief Judicial Magistrate, Nathdwara Distt. Rajsamand in criminal case No. 115/2001 by which the application of the complainant petitioner to amend the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act of 1881') was dismissed, be quashed and set aside and the amendment application dated 5.1.2002 filed by the complainant petitioner be allowed.

2. It arises in the following circumstances:-

On 22.2.2001, a complaint under Section 138 of the Act of 1881 was filed by the complainant-petitioner against the respondent in the Court of Addl. Chief Judicial Magistrate, Nathdwara stating inter-alia that a cheque No. 383326 for Rs. 2 lacs was issued by the respondent in favour of the petitioner, but the said cheque was dishonoured and it was returned with the endorsement that the amount in question was not found in the account of the respondent and that information was sent by the Bank to the petitioner on 8.1.2001. Thereafter, a notice was issued by the petitioner to the respondent and after the expiry of period of that notice, the said complaint was filed by the petitioner.

On that complaint, the learned Addl. Chief Judicial Magistrate, Nathdwara took cognizance on 27.3.2001 and thereafter, on 4.10.2001, contents of the offence were read over and explained to the respondent, who pleaded not guilty and claimed trial.

On 5.1.2002, an application was filed by the complainant petitioner in the said Court stating inter-alia that due to inadvertence and typographical mistakes, the cheque number and date of information by the Bank have been wrongly mentioned in paras No. 1 and 2 respectively of the complaint and therefore, it was prayed.

(i) That in para No. 1 of the complaint, instead of cheque No. 383326, the cheque No. 343336 be read; and

(ii) That in para No, 2 of the complaint, instead of date 8.1.2001, the date 9.1.2001 be read.

A reply to that application was filed by the respondent on 18.2.2002.

The said application of the complainant petitioner seeking amendment in the complaint was rejected by the learned Addl. Chief Judicial Magistrate, Nathdwara through impugned order dated 9.10.2002 holding inter-alia that since inherent power does not exist in the lower court, therefore, such mistakes could have not been rectified by him.

Aggrieved from the said order dated 9.10.2002 passed by the learned Addl. Chief Judicial Magistrate, Nathdwara, this petition under Section 482 Cr.P.C. has been filed by the complainant petitioner.

3. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and gone through the record of the case.

4. Before proceeding further, it may be clarified first whether the mistakes as pointed out by the complainant petitioner in the complaint were typographical mistakes or not and for that Ex.P/1, which is a cheque, may be referred to where the cheque number has been clearly mentioned as 343336 and in Ex.P/2, which is a letter which was issued by the Bank to the petitioner complainant, the date has been clearly mentioned as 9.1.2001, while in the complaint filed by the complainant petitioner, the cheque number and date have been shown as 383326 and 8.1.2001 respectively. In this view of the matter, the mistakes can be said to be typographical mistakes.

5. So far as the power of this Court is concerned, this Court has ample power to allow the amendment application in that direction under Section 482 Cr.P.C. From this point of view, this petition deserves to be allowed.

6. Before parting with this order, a question arises whether such type of mistakes can be rectified by the subordinate courts or not.

7. It is an established proposition of law that court of justice must possess inherent powers, apart from the express provisions of law, which are necessary to their existence and the proper discharge of duties imposed upon them by law. The Criminal Procedure Code or for the matter of that no procedural law is ever

exhaustive and in cases where circumstances required it, the courts have acted on the assumption that they possess inherent powers (as of right) to do justice for which they really exist. At the same time it must be remembered that a court has no inherent power to do that which is prohibited by the Code,

In this view of the matter every court whether civil or criminal in the absence of any express provision to the contrary, shall be deemed to possess as inherent in its very constitution, all such powers as are necessary in the course of the administration of justice. The rule of inherent powers has its source in a latin maxim 'Quod lex aliquid alicui concedit, concedere videtur id sine quo ipsa esse non potest', which means that when law gives any thing to any one, it gives also all those thing without which the thing itself could not exist.

8. The Courts exist for dispensation of justice and not for its denial for technical reasons when law and justice otherwise demand. Even though inherent power saved under Section 482 Cr.P.C. is only in favour of High Courts, the subordinate criminal courts are also not powerless to do what is absolutely necessary for dispensation of justice in the absence of a specific enabling provisions provided there is no prohibition and no illegality or miscarriage of justice is involved.

Thus, this Court is of the view that all the criminal courts are having such an auxiliary power subject to restrictions which justice, equity, good conscience and legal provisions demand provided it will not unnecessarily prejudice somebody else.

9. For the reasons stated above, the typographical mistakes, which have been pointed out by the complainant petitioner, should have been rectified by the trial court, as trial court has inherent power to rectify such typographical mistakes to do justice between the parties.

In the result, this misc. petition under Section 482 Cr.P.C. filed by the petitioner is allowed and the impugned order dated 9.10.2002 passed by the learned Addl. Chief Judicial Magistrate, Nathdwara is quashed and set aside and the amendment application dated 5.1.2002 filed by the complainant petitioner for correction of cheque number and date of information in the complaint is allowed.

The record of the trial court be sent back immediately for proceeding further in the matter in accordance with law.

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