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SooperKanoon Citation : sooperkanoon.com/860922

Court : Kolkata

Decided On : Feb-14-2006

Reported in : 2006(3)CHN222

Judge : Sailendra Prasad Talukdar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 401, 473 and 482; ;
[Negotiable Instruments Act, 1881](#) - Section s138 and 142; ;General Clauses Act -
Section 27; ;Limitation Act - Section 5

Appeal No. : C.R.R. No. 3280 of 2005

Appellant : Srikumar Chakraborty

Respondent : Datacon Systems Pvt. Ltd. and anr.

Advocate for Def. : Amit Bhattacharjee, Adv. for the opposite party No. 1

Advocate for Pet/Ap. : Sanjay Chakraborty, Adv.

Disposition : Application dismissed

Judgement :

Sailendra Prasad Talukdar, J.

1. The present case arises out of an application under Section 401 read with Section 482 of the Code of Criminal Procedure.

2. Grievances of the petitioner may briefly be stated as follows:

The petitioner is the Managing Director of Medcon Computer Systems Pvt. Ltd. having its office at East Agarpara, Kolkata-700109 and also having its office at AB-287, Sector-1, Salt Lake, Kolkata-700064 P.S. Bidhannagar. On 7th August, 2002 one Purnendu Basu, as authorized representative of Datacon Systems Pvt. Ltd., filed a petition of complaint under Section 138 read with Section 141 of the Negotiable Instruments Act before the learned Court of Chief Metropolitan Magistrate, Calcutta, thereby giving rise to case No.3355/02.

3. It was alleged in the said petition of complaint that the present petitioner in discharge of legal liability on behalf of Medcon Computer Systems Pvt. Ltd. issued two cheques in favour of Datacon Systems Pvt. Ltd, bearing Nos. 572707 for a sum of Rs. 52,545/- and 572808 dated 01.02.2002 for a sum of Rs. 51,000/- both drawn on United Bank of India, Hatibagan Branch, Calcutta-700004. The said two cheques, though deposited properly within the validity period, were returned unpaid on 24.5.2002 for the reason 'Exceeds Arrangements'. By a registered demand notice dated 06.06.2002, the opposite party herein demanded total sum of Rs.1,03,545/- but the said notice was returned on 23.07.2002 with the postal remark 'Not Claimed'.

4. The present petitioner filed an application on 08.07.2004 assailing the order of taking cognizance and challenging further proceedings of the said case. By order dated 12.08.2005, the learned 11th Court of Metropolitan Magistrate, Calcutta without dealing with the factual premises and the legal principles rejected the said application.

5. Being aggrieved by, and dissatisfied with, the said order dated 12.08.2005, the petitioner filed the instant application praying for quashing of the proceedings.

6. The learned Counsel for the petitioner submitted that the impugned order passed by the learned Court of Metropolitan Magistrate reflects misappreciation of the facts and the law. It was stated that the complaint was filed after expiry of one month from the date of cause of action, i.e. the period of limitation provided under Section 142(b) of the N.I. Act. Referring to Section 27 of the General Clauses Act,

it was submitted that the sender having despatched the notice bypost with correct address written on it, it should be deemed to have been served on the addressee. Attention of the Court was invited to the fact that the complainant did not mention the date of refusal of notice.

7. The learned Counsel for the petitioner referred to the decision in the case of Darshan Singh v. State of West Bengal and Ors. reported in 2001(1) CHN 235 in support of this contention that once the cause of action started running, it cannot remain suspended subsequently. It was contended that under Clause (C) to the proviso to Section 138 the cause of action starts running from the date of receipt of the notice but not from the date of receipt of the 'acknowledgement due card'. Relying upon the said decision it was submitted that the receipt of the 'acknowledgement due card' by the complainant is not material for the purpose of computation of limitation.

8. It was further submitted that the period prescribed for filing a complaint can neither be extended by Section 473 of the Code of Criminal Procedure nor by Section 5 of the Limitation Act. According to the learned Counsel for the petitioner, the notice in the instant case was sent on 06.06.2002 and 30 days period is required to be counted from the date of refusal.

9. Reference was also made to the decision in the case of K. Bhaskaran v. Sankaran Vaidhy Batan and Anr. reported in 2000 C Cr. LR (SC) 94, while submitting that 'giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer at the correct address.'

10. On the other hand, the learned Counsel for the opposite party submitted that the cheques were returned on 24.05.2002 and notice was sent within 15 days there from, i.e. on 06.06.2002. On behalf of the opposite party it was further submitted that the notice was returned on 23rd July, 2002 and the complaint was filed thereafter and, of course, within the period of limitation.

11. It is well-settled that to constitute an offence under Section 138 of the Negotiable Instruments Act, the following facts are required to be proved:

- (1) Drawing of the cheque;
- (2) Presentation of the cheque to the bank;
- (3) Returning of the cheque unpaid by the drawee bank;
- (4) Giving of notice in writing to the drawer of the cheque demanding payment of the cheque amount;
- (5) Failure of the drawer to make payment within 15 days of the receipt of the notice.

12. Referring to Black's Law Dictionary, it can be said that a person notifies or gives notice to another by taking such steps as may be reasonably required to inform the other in the ordinary course, whether or not such other actually comes to know of it.

13. The Apex Court in the case of K. Bhaskaran (supra) relied upon Maxwell's Interpretation of Statutes while enjoining that 'provisions relating to giving of notice often receive liberal interpretation'. It was observed that, 'it must be borne in mind that the Court should not adopt an interpretation which helps a dishonest evader and clips payee as that would defeat the very legislative measure'. In the present case it is admitted that the notice as required was sent within 15 days of return of the cheques. The said notice, however, returned on 23rd July, 2002 with the endorsement 'not claimed'. The petition of complaint was filed and cognizance was taken on 7.8.2002.

14. Such point was taken while praying for dropping of the proceedings before the learned Metropolitan Magistrate. The learned Court, however, by order dated 12.08.2005 rejected the application and also opined that the accused cannot be acquitted at that stage without going through the trial.

15. Considering the facts and circumstances of the case and having regard to the discussion, as made earlier, it is difficult to hold that the order under challenge suffers from any sort of infirmity, which justifies any interference by this Court.

16. Section 142(b) requires that the complaint is to be made within one month of the date on which the cause of action arises under Clause (C) of the proviso to Section 138 of the Negotiable Instruments Act. It is also worth mentioning that the proviso to Section 142, which has been incorporated by Act of 2002, authorises the Court to take cognizance on a belated complaint if the complainant satisfies the Court that 'he had sufficient cause for not making a complaint within such period.'

17. In the facts and circumstances of the present case, it is difficult to agree with the contention, as made on behalf of the petitioner, that allowing the proceeding to continue would be an abuse of the process of the Court.

18. Having regard to the fact that the notice returned as 'not claimed', the actual date of accrual of cause of action and the period within which the complaint is required to be filed are to be analysed in the context of the factual details. Considering all these aspects I do not find any justification for any interference at this stage and the present application, being C.R.R. No. 3280 of 2005, be dismissed. Interim order, if any, stands vacated. The learned Trial Court is directed to expedite the trial of the case, which is pending for quite some time.

19. Department is directed to supply xerox certified copy of this order, if applied for, to the learned Counsel of the parties as expeditiously as possible.