

Laiq Ram Vs. Bal Krishan

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Court : Himachal Pradesh

Decided On : Mar-05-2008

Reported in : 2008(1)ShimLC471

Judge : Surjit Singh, J.

Appellant : Laiq Ram

Respondent : Bal Krishan

Disposition : Petition dismissed

Judgement :

Surjit Singh, J.

1. Heard and gone through the record.

2. Complaint was filed against the petitioner (accused) under Section 138 of the Negotiable Instruments Act by the respondent (complainant) alleging that the former having borrowed a sum of rupees twelve lakhs from the latter, issued a cheque in his favour on 18.11.2002, which was drawn on State Bank of India, Sawra Branch and when the cheque was presented to the bankers, it was dishonoured on the ground that the account had already been closed. Learned Magistrate entertained the complaint and recorded the statement of the respondent (complainant), on oath. Besides making the statement, the respondent

produced photostat copies of the cheque and the writing of the bank, whereby the cheque was returned on the ground that the account stood closed. Trial Court, on the basis of the aforesaid statement of the respondent (complainant) and the photostat copies of the cheque and bank memo, passed an order under Section 204 of the Code of Criminal Procedure for summoning the petitioner (accused). When the petitioner (accused) appeared, substance of accusation was put to him. The petitioner has challenged both the summoning order and the order putting substance of accusation to him. I have heard the learned Counsel for the petitioner (accused) as also the learned Counsel representing the respondent (complainant).

3. The submissions that have been made on behalf of the petitioner (accused) are that photostat copies of the cheque and the bank memo, could not have been used as evidence by the Magistrate for summoning the petitioner and that there being no evidence before the Magistrate, except the aforesaid photostat copies, he was not justified in recording the satisfaction that there were sufficient grounds to proceed against the petitioner (accused). He has placed reliance upon many judgments of various Courts in support of his plea that photostat copies of documents cannot be used as evidence and that summoning order cannot be passed unless there is sufficient material on record.

4. It is true that photostat copies of documents may not be used as evidence unless the original are produced in the Court and the witnesses, who are supposed to prove such documents are examined, but the need to prove the documents arises only when the trial takes place. For passing a summoning order under Section 204 of the Code of Criminal Procedure, Magistrate is to go by the material on record. Evidence is recorded only after the trial begins. If the argument, advanced by the learned Counsel for the petitioner (accused) be accepted, then there cannot be any summoning order in a summons case; or even in a warrant case, instituted on police report, because at the stage of passing of the summoning order no evidence, in the sense of the term used by the learned Counsel, is available on record; it is only the police report and the statements recorded by the police during investigation and other documents and material collected by the Investigating Agency that are available with the Court at the time of passing of the summoning order.

5. It cannot be said that there was not any material before the Magistrate, while passing the impugned order. The respondent (complainant) appeared before the learned Magistrate and made a statement, on oath, running the risk of being prosecuted for perjury, in case the statement was later-on found to be false. He testified, in no uncertain terms before the learned Magistrate, that the cheque was issued by the respondent (complainant) and on presentation to his bankers, it was returned with a bank memo. He produced the photostat copies of the said cheque and the memo, and testified that the same were those of the cheque and the memo, in question. Under these circumstances, the second plea that there was no material available before the learned Magistrate for passing the impugned order and putting substance of accusation to the petitioner (accused), can also not be accepted.

For the foregoing reasons, the petition is dismissed.

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