

H.D. Gumber Vs. Ashok Sachdeva

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Court : Delhi

Decided On : Apr-11-2012

Judge : M.L. Mehta

Appeal No. : CRL.M.C. 1963 OF 2011

Appellant : H.D. Gumber

Respondent : Ashok Sachdeva

Judgement :

M.L. MEHTA, J:

1. This petition under Section 482 Cr PC has been preferred by the petitioner for quashing of criminal complaint being CC No. 10261/2003 and the summoning orders dated 28.7.2003, 22.11.2003, 01.04.2004, 29.10.2004, 01.06.2005, 14.9.2005, 03.12.2008, 09.04.2010, 19.05.2010, 20.07.2010, 13.08.2010 and order dated 27.01.2011, whereby notice under Section 251 Cr PC was framed against the petitioner by the learned M.M. in above mentioned complaint case filed by the respondent under Section 138, Negotiable Instruments Act (for short the „N.I.Act?).

2. The complaint case was registered at the instance of the respondent wherein it was alleged that the petitioner/accused had borrowed a sum of Rs. 25000/- at 2.5% interest in August, 2002 from the respondent/complainant as a friendly loan. It was alleged that a cheque bearing No. 052104 dated 23.11.2002 for the above

mentioned amount drawn on State Bank of Bikaner and Jaipur, Rohtak was issued by the petitioner in favour of the complainant. It was further alleged that the cheque was presented by the complainant to its banker on 10.04.2003 but the same was returned unpaid with the remarks "exceeds arrangements". It was further stated that on assurance given by the petitioner, the respondent presented the said cheque again on 23.05.2003 but it was returned unpaid. After sending the demand notice which was received by the petitioner, the complaint case was filed by the respondent, wherein the petitioner was summoned and notice was framed against him. Hence, the present petition.

3. The learned counsel for the petitioner has assailed the impugned summoning orders and notice framed under Section 251 Cr PC on the short ground that the cheque was presented by the respondent after the expiry of the statutory period of six months for the presentation of the cheque in the bank on which it was drawn by the drawer. Reliance has been placed on **Shri Ishar Alloy Steels Ltd. Vs. Jayaswals Neco Ltd., (2001) 3 SCC 609**. It has been submitted by the counsel for the petitioner that the cheque was presented by the respondent/complainant with mala fide intention as the petitioner had already repaid the loan amount to him in the month of November, 2002.

4. Per contra, it was the submission of the complainant/respondent that the loan amount was not paid by the petitioner and so he is liable to be tried for the offence under Section 138 of the Act.

5. I have heard learned counsel for the parties and also perused the record.

6. The fact of payment of loan by the petitioner is denied by the respondent/complainant and without any evidence in this regard, this fact cannot be decided by this Court. The main contention of the counsel for the petitioner is that the aforesaid cheque was presented by the respondent/complainant after the expiry of statutory period of six months from the date of its issue. Section 138 of the Negotiable Instruments Act reads as under:

"138. Dishonour of cheque for insufficiency, etc., of funds in the account.--

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act, be punished with imprisonment for ["a term which may extend to two year"], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) The cheque has been presented to the bank **within a period of six months** from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) The payee or the holder induce course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer, of the cheque, ["within thirty days"] of the receipt of information by him from the bank regarding the return of the cheques as unpaid, and

(c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice".

The proviso to Section 138 very clearly stipulates the maximum validity period of the cheque to be six months from the date on which it is drawn.

7. It would be relevant to note the findings of Apex court in this regard in the case of **Shri Ishar Alloy Steels Ltd.** (supra), which reads thus:

"It, however, does not mean that the cheque is always to be presented to the drawer's bank on which the cheque is issued. The payee of the cheque has the option to present the cheque in any bank including the collecting bank where he

has his account but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the drawee or payee bank on which the cheque is drawn within the period of six months from the date on which it is shown to have been issued. In other words a cheque issued by (A) in favour of (B) drawn in a bank named (C) where the drawer has an account can be presented by the payee to the bank upon which it is drawn i.e. (C) bank within a period of six months or present it to any other bank for collection of the cheque amount provided such other bank including the collecting bank presents the cheque for collection to the (C) bank. The non presentation of the cheque to the drawee-bank within the period specified in the Section would absolve the person issuing the cheque of his criminal liability under Section 138 of the Act, who shall otherwise may be liable to pay the cheque amount to the payee in a civil action initiated under the law. A combined reading of Sections 2, 72 and 138 of the Act would leave no doubt in our mind that the law mandates the cheque to be presented at the bank on which it is drawn if the drawer is to be held criminally liable. Such presentation is necessarily to be made within six months at the bank on which the cheque is drawn, whether presented personally or through another bank, namely, the collecting bank of the payee”.

8. Admittedly, the cheque was drawn on 23rd November, 2002 and the period of six months within which, it could be presented to the bank on which it was drawn, expired on 22.5.2003. However, the cheque was presented by the complainant on 23.5.2003 i.e. one day after the expiry of the statutory period of six months. Consequently, the cheque became invalid and thus the petitioner could not be made criminally liable for its dishonour under the provisions of Section 138 of the Act.

9. In view of above discussion and the settled law on the point, I am of the considered view that the learned M.M. failed to strictly construe the provisions of Section 138 of the Act while issuing summoning orders and framing notice against the petitioner. Accordingly, the petition is allowed. The complaint as also summoning orders and the notice under Section 251 Cr.PC being illegal are hereby quashed.

10. The petition stands allowed.

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