

SachIn Agarwal Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Sep-22-2011

Judge : Kant Tripathi

Appeal No. : Application U/S 482 No. - 18565 of 2011

Appellant : SachIn Agarwal

Respondent : State of U.P. and Others

Judgement :

Kant Tripathi, J.

1. Heard learned counsel for the applicant and the learned A.G.A. for the State and perused the record.
2. This is a petition under section 482 Cr.P.C for quashing the proceedings of complaint case no. 58/IX/10, Atul Agarwal Vs. Sachin Agarwal pending in the court of Judicial Magistrate-Vth, Mathura.
3. It appears that the respondent No.2 has filed the aforesaid complaint against the applicant under section 138 Negotiable Instrument Act, 1881 (hereinafter referred to as 'Act') on the ground that the applicant issued Cheque No. 0674988 dated 05.06.2010 for Rs. 3,00,000/- in favour of respondent No.2 which was payable at Punjab National Bank, Koshikala branch, Mathura. The respondent No.2 tendered the cheque in the bank for encashment but the cheque was

dishonored on the ground that there was no sufficient money in the account of the applicant. The respondent No.2 on receiving such information from the bank, sent the legal notice dated 08.07.2010 to the applicant calling upon him to make the payment of the amount mentioned in the notice within fifteen days but the applicant failed to pay the amount despite service of legal notice. Consequently, the respondent No.2 filed the aforesaid complaint under section 138 of the Act.

4. The learned Magistrate took cognizance of the offence and obtained affidavit of the respondent No.2 under section 200 Cr.P.C. and after considering the relevant materials passed the summoning order dated 08.12.2000 against the applicant.

5. Learned counsel for the applicant submitted that the learned Magistrate has not examined the complainant under section 200 Cr.P.C nor made any inquiry under section 202 Cr.P.C, therefore, the summoning order on the basis of the affidavit of the respondent No.2 was bad in law. It was next submitted that the order-sheet maintained in the complaint case, nowhere discloses that any affidavit was filed on behalf of the applicant. Therefore, the reference of the affidavit in the summoning order has no relevance. It was next submitted that there was no liability of the applicant towards any debt or any other similar transactions, therefore, the offence under section 138 of the Act was not made out. In this connection, learned counsel for the applicant placed reliance upon the case of Krishna Janardhan Bhat Vs. Dattatraya G. Hegde (2008) 2 SCC (Cri) 166.

6. Learned counsel for the applicant lastly submitted that the aforesaid cheque had been misplaced from the applicant and he had lodged a report on 14.04.2010, therefore, the respondent No.2 misused the cheque and concocted the present case. It was also submitted that the facts disclosed in the complaint are altogether false and have no reasonable basis, therefore, proceeding of the complaint case are liable to be quashed.

7. Section 145 of the Code has excluded the provisions of Code of Criminal Procedure with regard to the manner in which evidence of the complainant is to be taken. Section 145(1) of the Act provides that notwithstanding any contained in the Code of Criminal Procedure, 1973, the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in

any inquiry, trial or other proceedings under the said Act. However, the court has power in certain circumstances to examine the person giving evidence on affidavit either on the application of the prosecution or the accused and this provision is contained in sub-section (2) of the section 145 of the Negotiable Instruments Act. Therefore, according to the provisions of section 145 of the Act, the Magistrate was not legally required to examine the complainant and his witnesses as provided in section 200 of the Code of Criminal Procedure. The expressions "inquiry" and "other proceeding " used in section 145(1) of the Act very well includes the proceedings of the complaint case at the pre summoning stage, therefore, the affidavit could be filed and relied upon by the Magistrate in passing the summoning order. To this extent, the submission of the learned counsel for the applicant has no merit.

8. In the case of M/s. Mandvi Cooperative Bank Ltd. Vs. Nimesh B. Thakore AIR 2010 SC 1402, the Apex Court has very specifically held that provisions of section 143, 144, 145, 147 have overriding effect on the Code of Criminal Procedure. Section 145 allows that the evidence of the complainant to be given on an affidavit, i.e, in the absence of the accused. In para 17, the Apex Court further held that section 142 to 147 of the N.I. Act laid down a kind of special code for the trial of the offences under Chapter XVII of the Negotiable Instruments Act. In this view of the matter, the contention that the Magistrate was required to observe the provisions contained in section 200 and 202 Cr.P.C. does not appear to have any substance especially when section 145(1) of the Negotiable Instruments Act contemplates taking of the complainant evidence on affidavit not only in the trial but also in any inquiry or other proceeding. The term inquiry and also the term other proceedings very well includes the proceedings hold by the Magistrate before summoning the accused. Therefore, I do not agree with the submissions of the learned counsel for the applicant.

9. It is true that order sheet is silent regarding filing of affidavit by the respondent No.2 but the summoning order has specifically disclosed that there was an affidavit of the complainant. There, does not appear to be any reason to disbelieve the fact disclosed in the summoning order and to hold no affidavit had been filed, therefore, this submission has also no substance.

10. The submission that the complaint allegations were false and have no substance and the applicant had lost his cheque, being a question of fact, needs a thorough inquiry which is not permissible under section 482 Cr.P.C. In the case of State of Haryana Vs. Bhajan Lal and others (AIR 1992 SC 604), the Apex Court has very clearly held that the High Court is not required to embark upon an inquiry to find out truth. The complaint allegations have to be taken at their face value to find out whether the allegations make out any offence or not. In this view of the matter, the submissions with regard to the correctness of the allegations made in the complaint or with regard to the defence version has no relevance at this stage.

11. The judgment rendered by this court in the case of Phoolchand Tiwari and others Vs. State of U.P. And another 2011 (7) ADJ 20, has no application to the facts of the present case.

12. The complaint has very clearly disclosed that the applicant had taken Rs. 6,00,000/- from the respondent No.2 for executing a sale deed but he failed to execute the sale deed. Consequently, the respondent No.2 demanded the money and in pursuance of such demand, the applicant delivered the aforesaid cheque to the respondent No.2 and admitted his liability. In this view of the matter, the liability of the applicant, prima facie, comes within the purview of section 139 of the Negotiable Instruments Act.

Before parting of the matter, I consider it just and expedient to specify that whatever observations have been made herein before, they have been made in order to make appreciation of the submissions made by the learned counsel for the applicant and learned A.G.A., therefore, they will carry no relevance or significance during the trial. The trial court is expected to decide the case on the basis of the evidence to be adduced during the trial without being influenced from any of the observations of this court.

In view of the aforesaid, the application under section 482 Cr.P.C has no merit and is dismissed.