

Chandra Pal Vs. State of Uttaranchal and Others

Chandra Pal Vs. State of Uttaranchal and Others

SooperKanoon Citation : sooperkanoon.com/952687

Court : Uttaranchal

Decided On : Dec-12-2011

Reported in : 2012CrLJ296(NOC)

Judge : B.S. Verma

Appeal No. : CRIMINAL REVISION NO. 130 & 103 OF 2004

Appellant : Chandra Pal

Respondent : State of Uttaranchal and Others

Judgement :

B.S. Verma, J. (Oral)

Since similar controversy is involved in the above two revisions, therefore, for the sake of convenience, they are being decided by this common judgment.

Criminal Revision No. 130 of 2004, has been preferred against the judgment and order dated 30-6-2004, passed by I F.T.C./Additional District and Sessions Judge, Hardwar in Criminal Appeal No. 5 of 2004, Chandra Pal vs. State of Uttaranchal and another whereby the appeal was dismissed and judgment and order dated 22-1-2004, passed by II Special Judicial Magistrate, Haridwar passed in complaint case No. 58/2003 Vinod Kumar Sharma vs. Chandra Pal was upheld. The learned Special Judicial Magistrate has convicted the accused/revisionist U/S 138 of Negotiable Instruments act and he was directed to pay Rs. 30,000/- and in default

of payment he shall suffer imprisonment for one year.

Criminal Revision No. 103 of 2004, has been preferred against the judgment and order dated 26-5-2004, passed by I F.T.C./Additional District and Sessions Judge, Haridwar in Criminal Appeal No. 61 of 2003, Chandra Pal vs. State of Uttaranchal and another whereby the appeal was dismissed and judgment and order dated 28-11-2003, passed by II Special Judicial Magistrate, Haridwar passed in complaint case No. 59/2003 Vinod Kumar Sharma vs. Chandra Pal was upheld. The learned Special Judicial Magistrate has convicted the accused/revisionist U/S 138 of Negotiable Instruments act and he was directed to pay Rs. 28,000/- and in default of payment he shall suffer imprisonment for one year.

Brief facts giving rise to these revisions are that the complainant Vinod Kumar and accused/revisionist Chandra Pal were having transactions being family terms amongst them. According to complainant, a sum of Rs. 72,000/- of complainant was due against the accused/revisionist. The accused/revisionist issued two cheques in lieu of the debt, amounting to Rs. 15,000/- each in favour of complainant. When these cheques were presented before the Bank for payment, they were returned back for want of sufficient fund in the account. Thereafter the complainant sent notices to the revisionist/accused for making the payment, but he failed to make payment and deceived him.

Thereafter the complainant filed complaints before the trial Magistrate, who recorded the statement of complainant U/S 200 Cr.P.C. The complainant also filed original cheques, memo issued by Bank making endorsement that payment cannot be made for want of sufficient fund, copies of notices, postal receipts etc, under the provision of Section 202 Cr.P.C. The learned Magistrate took cognizance in both the matters and summoned the accused/revisionist to face trial U/s 138 of Negotiable Instruments Act.

The accused/revisionist appeared in the Court and in his statement U/S 251 Cr.P.C. he denied the issuance of disputed cheques. He also denied his liability to make any payment to the complainant.

In support of his case, the complainant got examined himself as P.W.1, Subhash Chandra as P.W.2 and S.K. Agarwal P.W.3 in complaint case No. 59/2003. In complaint case No. 58/2003 he has examined himself as P.W.1 and S.K. Agarwal, as P.W.2. Thereafter, statement of accused was recorded U/S 313 Cr.P.C. He has denied the issuance of the disputed cheques. In Complaint Case No. 59/2003 he has examined himself as D.W.1 in his defence, whereas in another case he did not adduce any evidence in his defence.

The learned Special Judicial Magistrate after considering the evidence on record and hearing counsel for parties passed the impugned judgment holding the accused/revisionist guilty in both the cases U/S 138 of Negotiable Instruments and accordingly convicted him as mentioned in the preceding paragraphs of this judgment.

Feeling aggrieved by the orders of conviction, the accused preferred appeals before the 1st F.T.C./Additional District and Sessions Judge, Haridwar, who dismissed the appeals vide impugned judgments and orders.

Now the accused has come up before this court by filing the revisions.

I have heard learned counsel for parties and perused the entire record. Learned counsel appearing on behalf of the revisionist has submitted that the complainant has failed to prove by cogent and reliable evidence that debt was due against the accused/revisionist. It has also not been proved by expert evidence that the signatures on the disputed cheques are of the revisionist and these cheques were issued by the revisionist and the judgments and orders passed by courts below are based on conjectures and surmises.

On the other hand learned G.A. and learned counsel appearing on behalf of complainant/respondent has refuted the contentions of learned counsel for revisionist and contended that offence U/S 138 of N.I. Act has fully been proved against the revisionist and they have supported the judgments and orders passed by the courts below.

Perusal of record shows that the complainant Vinod Kumar Sharma, has examined himself as P.W.1, in both the cases and he has made on oath statement that Rs. 72,000/- were due to him against the accused and the accused has issued two cheques amounting to Rs. 15,000/- each. He has proved those cheques as Ex. Ka.1, bearing numbers 0818038 and 0818039. He has further deposed that these cheques were presented before the concerning Bank but the same were dishonored. This witness further deposed that when the cheques were dishonored, he sent notices to the accused for payment but he failed to do so. This witness has also proved the copies of notices sent to accused and postal receipts and the A.D. From perusal of these cheques it is obvious that the same were issued by the accused Chandra Pal in the name of Vinod Kumar Sharma, complainant. They are issued on 31-12-96 and 10-2-97. The complainant further deposed that cheque No. 0818038 was produced by him before the Bank on 21.2.97 but the same was dishonored by the Bank and thereafter he sent notice of demand to the accused on 5.3.1997 and the notice was received by the accused on 7-3-1997 as is apparent from the endorsement made on A.D. Ex.Ka.4. Another cheque No. 0818039 was produced by the complainant before the Bank on 21-2-97 and the same was also dishonored by the Bank for want of sufficient fund. Thereafter the complainant sent notice of demand dated 1-7-97 which was also received by the accused on 7-3-1997 as is clear from the A.D. Ex. Ka.5. But after receipt of above notices the accused did not come forward to make payment to the complainant.

In complainant case No. 59/2003, he also produced Subhash Chandra P.W.2 who has deposed that on 10-2-1997 at about 4.15 P.M. at the house of Vinod Kumar the accused had singed a cheque of Rs. 15,000/- and given it to complainant. At that time Shiv Kumar was also present there. The complainant also examined Sri S.K. Agarwal, Manager of Indian Oversees Bank. This witness has deposed that account No. 694 is standing in the name of Chandra Pal. A cheque book bearing number 818031 to 818040 was issued to him by the Bank. Cheque No. 818038 was deposited in Indian Oversees Bank and its payment was not made due to the reason that sufficient fund was not available in the account. This witness further deposed that the accused had stopped the payment of the cheques bearing number 818038 to 818040 and he has given application in this respect for

stopping the payment of these cheques. This witness further deposed that the signatures on disputed cheques were similar to that of accused Chandra Pal. No explanation has come from the side of the accused as to why he had got stopped the payment of disputed cheques. The accused neither sent reply of notices sent to him by the complainant nor disputed the signatures of cheques while giving application to the Bank for stopping payment of the cheques hence no question of examination of disputed signatures by hand writing expert arise. When the accused had issued the cheques in favour of the complainant then it was his obligation to have sufficient fund so as to clear those cheques. But in this case the accused himself stopped payment of these cheques by moving application before the Bank. On the one hand the accused denies issuance of these cheques and at the same time he moved application before the Bank to stop payment of these cheques.

Learned counsel appearing on behalf of respondent/complainant has also submitted that the cheques in dispute have been issued in favour of the complainant by the accused, therefore, presumption U/S 139 of N.I. Act should be drawn that the complainant received these cheques for the discharge of the debt in part.

Section 139 of the Act reads,-

“Presumption in favour of holder- that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, or any debt or other liability.”

In the instant case the specific case of the complainant has been that Rs. 72,000/- were outstanding as debt against the revisionist and in lieu of part payment thereof he has issued these two cheques amounting to Rs. 15,000/- each. Contrary to it the revisionist has not been able to establish that these cheques were not issued by him and he had not issued the said cheques in discharge of part debt. On the one hand the accused/revisionist had denied the issuance of these cheques and on the other hand he had moved application before the Bank for stopping payment of these cheques, saying that he has paid the debt of the complainant. This conduct of the accused clearly goes against the stand taken by him that he has

not to pay any debt to the complainant and he has not issued these cheques and it shall be presumed that the complainant received the cheques of the nature referred to in section 138 for the discharge of debt in part.

Thus, from the evidence on record, it is amply proved that the disputed cheques were issued by the accused/revisionist in favour of the complainant and when these cheques were presented before the concerning bank the same were dishonored and thereafter when the complainant sent notices to the complainant to make payment to him, he did not make payment within 15 days of the notice and an offence punishable U/S 138 of Negotiable Instruments Act is proved against him beyond all reasonable doubts. I do not find any manifest error of law as well as jurisdictional error in the impugned judgments. Both the revisions lack merit and are liable to be dismissed.

Both the revisions are dismissed. The judgment and orders passed by both the courts below are affirmed.

The stay order dated 13.8.2004 passed in Criminal Revision No. 130/2004, staying the 50% fine is vacated. The accused/revisionist has been granted interim bail. His bail bonds are cancelled and sureties discharged. If the accused/revisionist fails to make payment of fine imposed against him by the trial Magistrate in both the cases within the stipulated period, as has been mentioned in the impugned judgments, from the date of this judgment, he shall be taken into custody to serve out the sentence awarded against him.

Let a copy of this order be placed in the file of Criminal Revision No. 103/2004.

Let record of the case be transmitted to the court concerned forthwith for further compliance.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com