

*** "REPORTABLE"**
HIGH COURT OF DELHI AT NEW DELHI

+ Crl.M.C.3000/2007

Reserved on: October 21, 2008
Pronounced on: February 06, 2009

BANSAL PAPER MART & ANR. ..PETITIONER

! Through : Mr. Pankaj Seth,Adv.

Versus

\$ STATE & ANR. ...RESPONDENTS

**^ Through : Mr.M.P.Singh,APP
Mr.M.K.Shah,Adv.for R2**

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**CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH**

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

ARUNA SURESH, J.

1. Impugning the order of the trial court dated 31.08.2005 and consequent notice under Section 251 Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C'.) dated 10.04.2007, present petition has been filed by the petitioners seeking

quashing of Criminal Complaint; case No. 1327/1 of 2005 filed by respondent No. 2 against the petitioners.

2. Petitioners and the complainant (respondent No. 2 herein) had business dealings with each other for sale and purchase of papers and stationery products. Respondent No.2 had maintained a running account of the petitioner in its books of accounts. Petitioners issued cheque No. 003690 dated 1.6.2005 for a sum of Rs.1,49,474/- drawn on Lord Krishna Bank against bill No. 3103 raised by the respondent. This cheque, on presentation to the Bank, was dishonoured with the remarks "*insufficient funds*" vide Memo dated 5.7.2005. A legal notice dated 22.07.2005 was served upon the petitioners by the respondent. This notice was duly replied by the petitioners through their Advocate on 5.8.2005. Since petitioners failed to make payment of the dishonoured cheque despite serving the aforesaid notice, a complaint under section 138 of the Negotiable Instruments Act (hereinafter referred to as "the Act") was filed by the

respondent. On the basis of pre-summoning evidence, trial court took cognizance of the offence and summoned the petitioners vide his order dated 30.08.2005. On appearance of the petitioners in the Court, the Court served notice under Section 251 Cr.P.C. upon the petitioner on 10.04.2007.

3. Petitioners have challenged the maintainability of the complaint as well as the order of the trial court dated 31.08.2005 and the notice dated 10.04.2007 on the grounds that petitioners had already made payment of the impugned cheque even before the receipt of legal demand notice and no cause of action survived in favour of the respondent for filing the complaint under Section 138 of the Act.
4. It is argued by Mr. Pankaj Seth, learned counsel for the petitioners that two cheques for Rs. 2,98,948/- and Rs. 1,49,474/- being cheque Nos. 003686 and 003690 respectively were issued in favour of respondent No.2 by the petitioners against the dishonoured cheque No. 003690 for payment of bill No. 3103 and the respondents had already received

the payment of the said cheques even before the notice dated 22.07.2005 was served upon the petitioners by the respondents through their Advocate. Since payment had already been received by the respondent against the impugned dishonoured cheque; the respondents, suppressing this vital fact, filed the complaint with a view to harass the petitioners and to pressurize them to extort some undue money from the petitioners.

5. Mr. M.K. Shah, learned counsel for respondent No.2 has submitted that a running account was maintained by the respondent regarding the business transactions with the petitioners and in the ledger account, the payments, when received from the petitioners, were duly credited in their account; since a running account was maintained, the payment received from the petitioners by way of pay order No. 195429 drawn on Corporation Bank amounting to Rs. 2,60,000/- and pay order No. 1515 drawn on Lord Krishna Bank for Rs. 1,88,422/- both dated 22.06.2005 were credited in the account of the petitioners and duly accounted

for. These payments in no manner could be treated to have been made against the dishonoured cheque; the respondent was within its rights to file the complaint on the basis of the dishonoured cheque which was for due consideration.

6. In their reply dated 5.8.2005, the petitioners have specifically stated that the impugned cheque was a post dated cheque issued in favour of the respondent on an assurance that the said cheque would be presented after intimation and sufficient notice to the petitioners. It is also specifically stated in the reply that the amount of the impugned cheque was paid by way of two pay orders for a total sum of Rs. 4,48,422/- which included payment of Bill No. 3103. Relevant paras of the reply read as follows:

“3-5. With reference to the contents of para 3 to 5 of your legal notice, we have been instructed to inform you that our clients were willing to make immediate payment and it was only at the request of your clients post dated cheques were issued by our clients in favor of your clients. The same were given upon assurance of your clients that the same will be presented after

intimation and sufficient notice to our clients. In fact we on behalf of our clients wish to inform you that two cheques of Rs.2,98,948/- and Rs. 149,474/- being cheque No. "003686" and "003690" respectively were issued to your clients by our clients at their request. The aforesaid cheque no. "003690" was issued against Bill No. 3103.

7. Our clients upon intimation of dishonor of cheques from its bank immediately instructed its bankers to issue 2 pay orders in favor of your clients. The same being Pay Order No. "195429" drawn on Corporation Bank amounting to Rs.2,60,000/- and Pay Order No. "1515" drawn on Lord Krishna Bank amounting to Rs.1,88,422/- both dated 22.06.05 have been since handed over to your clients who have duly acknowledged its receipt and appropriated the said amounts without any protest."

7. The petitioners, therefore, denied any liability to pay a sum of Rs.1,49,474/- being the amount of the dishonoured cheque No. 003690. Petitioners had raised this defence before the trial court and they produced the receipt of the above said pay orders before the court with a copy to the counsel for respondent No. 2. Counsel for respondent No. 2 took adjournments for verification and thereafter for filing some documents show that receipt of the

payment made by petitioner No. 2 was inadvertently issued by the concerned record clerk of the respondent. Despite having taken adjournments, respondent No. 2 failed to submit in the court any verification report of the receipt and also failed to file the documents indicating the circumstances in which the said receipt was issued. Under these circumstances, the receipt dated 22.06.2005 becomes relevant and crucial document for the court to consider if, the payment of the impugned cheque was duly made by the petitioners by way of two pay orders.

8. Execution of this receipt by Amit Bansal, an employee of the respondent is not in dispute. This receipt is addressed to the petitioners duly signed by Amit Bansal for respondent No. 2. The contents of the receipt are reproduced as below:

“.....Thanks to received 2 pay orders for the amount Rs. 2,60,000/- No. 195429, Drawn on Corpn. Bank, G.K.II & Rs. 1,88,422/- No. 1515 drawn on Lord Krishna Bank, Kalkaji, Total Rs.448422/- against ch.nos. 003686 & another Ch.No.-003690 for Rs. 1,49,474 in favour of M/s. KCT &

Bros (c.s.) Ltd. Total amount Rs.
448422/-.....”

9. Bare reading of this receipt makes it clear that two pay orders being pay order No. 195429 for Rs. 2,60,000/- drawn on Corporation Bank, G.K.II and another pay order No. 1515 drawn on Lord Krishna Bank, Kalkaji for Rs. 1,88,422/- were admittedly received by the respondent as payment against cheque Nos. 003686 for Rs. 2,98,948/- and cheque No. 003690 for Rs. 1,49,474/-, the total amount being Rs. 4,48,422/-. Both these pay orders have been got encashed by the respondents. The impugned cheque was issued against Bill No. 3103. As per this receipt, the payment of the impugned cheque was immediately made to the respondent when petitioners came to know that the said cheque on presentation was dishonoured. Since the pay orders were received by the respondent against two particular cheques, it is not acceptable that the payment made by the petitioners by way of pay orders was in account for other business transactions, especially when petitioners have not been able to file any document on the record to

indicate that the payment as made by the petitioners was against some other transactions or was in account.

10. The acknowledgement receipt bonafidely issued by a responsible officer of the respondent company on the letter head of the company cannot be ignored and brushed aside by the Court, especially when its authenticity and genuineness is not in dispute. The copy of the ledger book placed on the record by the respondent only reflects the debit entry pertaining to the dishonoured cheque but does not indicate credit entries of the payment received from the petitioners by way of the above said two Pay Orders. After receipt of the payment against the impugned cheque, no cause of action subsisted in favour of the respondent company against the petitioners. The payment was undisputedly received before filing of the complaint. The respondent company, therefore, had no right to file the impugned complaint under Section 138 of the Act as on the date of filing of the complaint the liability of the petitioners against the impugned

cheques stood liquidated. The complaint is nothing but misuse of process of law on behest of the respondent company with a view to pressurize the petitioners to make payment of amount which might be due from them to the respondent company for other business transactions. The complaint, therefore, under the circumstances, is not maintainable being without any cause of action.

11. Consequently, in the light of the discussion as above, the petition is allowed. The Complaint Case No. 1327/1 of 2005 and summoning order dated 31.08.2005 passed therein as well as notice dated 10.04.2007 framed under Section 251 Cr.P.C. and other consequential proceedings recorded in the complaint are hereby quashed.

Attested copy of the order be sent to the trial court as well as to the State.

**ARUNA SURESH
(JUDGE)**

**February 06, 2009
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