IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-25658 of 2013 (O&M)
Date of Decision:14.5.2015

Ashok Kumar Sood

….Petitioner

Versus

Som Nath

….Respondent

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. J.S. Jaidka, Advocate for
Mr. Manoj Kumar, Advocate for the petitioner.

Mr. Harish Sharma, Advocate for the respondent.

NAVITA SINGH, J.

1. This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of order dated 11.5.2012 passed by Sessions Judge, Panchkula in revision filed by the respondent, whereby summoning order dated 18.10.2008 and the order serving notice dated 30.3.2011 passed by Chief Judicial Magistrate, Panchkula, was set aside.

2. The case of the petitioner, who was the complainant, that he had filed a complaint under Section 138 of the Negotiable Instruments Act (Act for short) that the respondent had approached him for a loan of Rs.,3,50,000/- regarding which the respondent issued a cheque on 1.4.2008 drawn on Oriental Bank of Commerce, Sarbha Nagar, Ludhiana. The cheque was returned with the remarks that no such account was standing with the bank concerned. The information was received on 17.4.2008. Thereafter the petitioner informed the respondent about it. The respondent requested the petitioner to present the cheque again but even on second presentation, the same remarks were given by the bank.

3. After making preliminary enquiry, trial Court summoned the respondent as an accused. Revision petition was filed by the respondent before the Sessions Judge, Panchkula, which was allowed.

4. It was held by the court of revision below that the steps required for Section 138 of the Act, to be completed were (1) Drawing of the cheque (2) Presentation of the cheque to the bank (3) Returning the cheque unpaid by the drawee bank (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

5. The court held that the complainant had received a report that the account had been closed or it did not exist but he presented the cheque again to enable him to institute a complaint and the pretext was that the accused had assured that on fresh presentation, the cheque was honoured. No notice was given to accused after the remarks received from the bank initially.

6. Contention for counsel for the petitioner was that the limitation was to run from the time when the cheque was dishonoured the second time. He submitted that since the petitioner did not want to get into litigation, he mentioned to the respondent about dishonor of the cheque who had assured that it would be honoured the next time. The affidavit filed by the petitioner in evidence stated by way of examination-in-chief about assurance of the accused but from the cross examination of the complainant, it is clear that the same was just a story.

7. Even otherwise, it was rightly held by the court of Session that the cheque was presented again only to save the limitation because no notice was given to the complainant within time, to the other party when the cheque was dishonoured for the first time.

8. Counsel for the petitioner relied on MSR Leathers Vs. S. Palaniappan and another 2014 (1) SCC (Criminal) 410 where it was held by

Supreme Court that successive presentation of the cheque would give fresh cause of action. However, the facts of the case were different because there the cheque was returned with an endorsement that funds were not arranged for. Here the report from the bank was that the account did not exist. Second presentation was, therefore, not required to be made. It is not believable that the respondent had assured the petitioner about the honouring of the cheque second time because for that he would have had to open an account especially for that purpose.

9. In Devan Vs. Krishna Menon 2011 (6) RCR (Criminal) 1033 it was held by the Division Bench of Kerala High Court that successive presentation of the cheque could be made `within the permissible period'. Here in the case, cheque was not presented again within the permissible period. A Division Bench of the Allahabad High Court held in M/s Nagdev Sons Vs. State of U.P. 1999 (1) RCR (Criminal) 483 that successive presentation of the cheque was permissible but then in that case also the remarks from the bank were that payment was not available in the account.

10. The facts of the reported cases being different, the petitioner cannot take any benefit from those.

11. In view of the above, no infirmity is found in the order passed by the Sessions Judge, Panchkula. The petition is dismissed.

(NAVITA SINGH)
JUDGE

14.5.2015
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