

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRR-196-2015

Date of decision : 19.01.2015

Mahabir Singh

... Petitioner

Versus

Naresh Kumar

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Roshan Sharma, Advocate
for Mr.Vikram Singh, Advocate
for the petitioner.

REKHA MITTAL, J.

The present petition lays challenge to the judgments passed by the Courts below whereby the petitioner has been convicted and sentenced for commission of offence punishable under Section 138 of the Negotiable Instruments Act 1881 (in short ' the Act').

The sole submission made by counsel for the petitioner is that the respondent-complainant has failed to prove service of legal notice Ex.P5 calling upon the petitioner to pay the cheque amount, therefore, one of the essential ingredients of offence punishable under Section 138 of the Act is patently missing and the judgments passed by the Courts below are liable to be set aside on this score alone.

I have heard counsel for the petitioner and perused the records.

Apart from the fact that the petition is barred by limitation, I do not find any reason to intervene.

The respondent filed the complaint on the premise that the accused issued cheque in question of the value of Rs.10 lacs in discharge of his liability which got dishonoured on its presentation to the bank with the remarks "Funds Insufficient". Legal notice Ex.P5 by way of registered process was issued calling upon the accused to pay the cheque amount but he failed to discharge his liability inviting initiation of criminal proceedings. The learned trial Court and the Court in appeal, on a detailed consideration of this plea of the petitioner in regard to service of notice has held against the petitioner with the findings that there is a presumption under the General Clauses Act that a registered letter correctly addressed has been delivered to the addressee unless proved otherwise. It appears that the petitioner did not raise any such issue that the address given on the registered notice is not the correct address of the petitioner. In this view of the matter, I do not find any reason to differ with the concurrent findings recorded by the Courts below that legal notice was duly served upon the petitioner. This apart, assuming for the sake of arguments that the petitioner had not received the notice, he could make payment within 15 days from receipt of summons from the Court to escape prosecution as has been held by the Hon'ble Apex Court in ***C.C.Alavi Haji Vs. Palapetty Muhammed and another, 2007(3) RCR (Criminal) 185***. A relevant extract (para 17) from the judgment is quoted thus:-

"17. It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court

in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskarans case (supra), if the “giving of notice” in the context of Clause (b) of the proviso was the same as the “receipt of notice” a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act.”

The petitioner has been sentenced to simple imprisonment for a period of one year and further order to compensate the complainant by paying half of the cheque amount i.e. Rs.5 lacs under Section 357(3) of the Code of Criminal Procedure within six months. I do not find any error much less illegality in the order of sentence passed by the trial Court and affirmed in appeal.

In view of what has been discussed hereinabove, finding no merit, the petition fails and is accordingly dismissed.

(REKHA MITTAL)
JUDGE

January 19, 2015.