

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CWP-24224-2019

Date of decision: 02.05.2024

RAJESH KUMAR ANTIL

.....Petitioner

VERSUS

BIJENDER (NOW DECEASED) THROUGH HIS LRS AND ANOTHER

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Ketan Antil, Advocate
for the petitioner.

None for respondent No.1.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present writ petition is to the order dated 08.12.2018 passed by respondent No.2 whereby the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 had been dismissed as withdrawn on recording that payment for the cheque has already been made.

2. Notice of motion had been issued in the present case after noticing the contention of the petitioner that no statement was made by the petitioner to the effect that the cheque amount had been deposited in his account and he only made a simplicitor statement seeking withdrawal of his

complaint. The operative part of the order dated 08.12.2018 passed by the Lok Adalat to the extent whereby it refers that the accused had deposited the cheque amount in the Bank is thus incorrect. Notice was issued in the present case on 07.01.2020 and as per the office report dated 22.06.2020, the respondents have already been served. The matter was adjourned on different occasions to enable appearance on behalf of the said respondent, however, no one has turned up.

3. Accordingly, Ms. Komal Sharma, Advocate, Mobile No. 8283831982 is appointed as Legal Aid Counsel to assist this Court and to defend the interest of respondents. She be paid fee as per rules.

4. Learned Legal Aid Counsel appointed has gone through the paper book and has verified the contentions raised by the petitioner. She has referred to the statement dated 17.09.2018 of the petitioner, which reads thus:-

“Statement of Rajesh Kumar son of Sh. Hari Chand, age 42 years, resident of VPO Jahri, District Sonapat.

*It is stated that I withdraw my existing complaint.
The same may be recorded.*

RO & AC

Sd/-

Rajesh Kumar

Sd/-

*Saravpreet Kaur
Judicial Magistrate, 1st Class,
Sonapat.*

5. She also refers to the Zimni order passed by the Judicial Magistrate, First Class, Sonapat on 17.09.2018 which reads thus:-

Present: Complainant in person with Sh. Deepak Antil, Adv.

Today the case was fixed for appearance of accused through notice. Notice issued against accused Bijender received back with the report that accused Bijender has died. Death certificate filed.

*At this stage, **Complainant Rajesh Kumar** has appeared and stated that he does not want to continue with the present case; the same be dismissed as withdrawn, vide his separately recorded statement. In view of his statement so recorded, now to come up on 10.11.2018 for consideration in view of statement of complainant in the National Lok Adalat.*

6. She thus as the Legal Aid Counsel does not dispute the contention raised and fairly assists this Court to contend that the statement recorded in the impugned order passed by National Lok Adalat, while withdrawing the complaint is at variance from the actual statement of the complainant made in Court and as recorded in the referral order of 17.09.2018.

7. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present writ petition.

8. The contention raised by the petitioner that the impugned order dated 08.12.2018 wrongly records that a statement had been given by the petitioner to the effect that the accused had deposited the cheque amount in the Bank and hence he does not want to continue with the present complaint was wrong and the statement of the petitioner as also reflected from the order passed by the Judicial Magistrate, First Class, Sonapat on the even date does not make any reference of the amount of cheque having been issued by the respondent-accused.

9. Further, an affidavit has also been filed by the petitioner wherein it is specifically stated that neither the deceased Bijender nor any of his heirs have deposited any amount with the deponent in respect of the disputed cheque in relation where to the proceedings under Section 138 of the Negotiable Instruments Act, 1881 had been initiated.

10. It is evident from a perusal of the statement that accused Bijender Singh had already died, hence, criminal proceedings against him could not proceed and would abate. An erroneous statement recorded impacts the entitlement of the petitioner to seek recourse to civil proceedings as well. In any case, the respondents would have every right to take the plea in defence, if the amount stands paid. They would thus not suffer any prejudice.

11. An award passed by the Lok Adalat, if based on an incorrect, fraudulent or misleading statement can always be challenged. A Lok Adalat, being an ADR forum aims at resolving dispute in a fair and expeditious manner, but is expected to adhere and follow principles of fairness and justice. If a decision is influenced by a wrong, misleading or fraudulent statement, such an irregularity impedes the cause of justice rendering the award liable to be set aside.

12. Further, the claim of the petitioner has remained uncontested and uncontroverted. The present writ petition is hence allowed and the impugned order dated 08.12.2018 passed in the National Lok Adalat is modified. The said order be merely read as a simplicitor withdrawal of the complaint CIS No. 1355-2016 titled as ***“Rajesh Kumar Antil versus Bijender”*** instituted by the petitioner under Section 138 of the Negotiable Instruments Act, 1881.

13. The writ petition is allowed in the above said terms.
14. A copy of the order be sent to the High Court Legal Service Authority, for information and necessary action.

(VINOD S. BHARDWAJ)
JUDGE

MAY 02, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No