(1990) 04 P&H CK 0055

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 280-M of 1990

Abdul Samad, Managing Director of Bias Steel Pipe Industries Pvt. Ltd. — APPELLANT

Vs

Satya Naraiyan Mahawar — RESPONDENT

Date of Decision : 23-04-1990

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1993) 76 CompCas 241 : (1990) 98 PLR 269

Hon'ble Judges : A.P. Chowdhri, J

Bench : Single Bench

Advocate : Ashok Aggarwal and Arun Sanghi, for the Appellant; J.S. Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

A.P. Chowdhri, J.—This is an petition u/s 482, Code of Criminal Procedure, for quashing the complaint dated Jule 26, 1989 (Annexure P-1) u/s 138 of the Negotiable Instruments Act and the summoning Order passed thereon.

2. The respondent filed a complaint with the allegations that the accused (petitioner herein) had inter alia, issued a cheque dated June 9, 1989. for Rs. 22,000/- in connection with an amount which had become due on account of purchase of some raw material by him. The cheque was returned unpaid by the bank with the remarks "Payment stopped by the drawer". The complainant sent the requisite notice, but the accused failed to make payment Hence, the complaint.

3. After recording preliminary evidence the learned Magistrate summoned the accused for the aforesaid offence vide order Annexure P-2.

4. The Negotiable Instruments Act, 1881, was amended by the Banking, Public Financial Institutions and Negotiable Instruments Law (Amendment) Act, 1988.

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Section 138, which is material for the present purposes, reads as under :--

"138. Dishonour of cheque for insufficiency, etc. of funds in the account.--Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged made with that bank, such person shall be without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque or with both :

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque, within fifteen days of the recepit of the said notice.

Explanation --For the purposes of this section, "debt or other liability" means a legally enforceable debtor or other liability."

5. It will be seen that the above section has the following main ingredients:

(i) The cheque is drawn on a bank for the discharge of any legally enforceable debt or other liability.

(ii) The cheque is returned by the bank unpaid.

(iii) The cheque is returned unpaid because the amount available in that account is insufficient for making the payment of the cheque.

(iv) The payee gives a notice to the drawer claiming the amount within 15 days of the receipt or the information by the bank.

(v) The drawer fails to make payment within 15 days of the receipt of notice.

6. The contention of the learned counsel for the petitioner is that ingredient No. (iii) above is missing, and, therefore it will be abuse of process of Court to permit the proceedings to continue in the Court of the learned Magistrate. It is well known that a cheque may be returned by the Bank unpaid for various reasons.

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One of the reasons can be that there is no adequate amount available in the account on which the cheque is drawn to enable the bank to make the payment. The Parliament in its wisdom has confined the offense referred to in Section 138 only to bouncing of cheque on the ground of unadequate balance in the account concerned. Where the cheque is returned unpaid for other grounds, the same has not been made an offence Faced with this difficulty, learned counsel for the respondent stated that be may be given an opportunity to show that in fact the cheque had been returned unpaid for want of adequate credit balance in the account concerned. In view of the categorical stand taken in the complaint itself, there is no justification to let the proceedings continue. According to the respondents own showing the cheque had been returned unpaid as the drawer had stopped payment and this is apparently on account of civil litigation pending between the parties.

7. For the reasons mentioned above the petition is allowed and the complaint and the summoning order aforesaid are hereby quashed.

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