
(2016) 07 RAJ CK 0146
In the Rajasthan High Court
Case No : Criminal Misc. Petition No. 1801 of 2016

Anil Kumar

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 06-07-2016

Acts Referred:

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

Citation : (2017) ACD 344 : (2017) 1 NIJ 242

Hon'ble Judges : Mr. P.K. Lohra, J.

Bench : Single Bench

Advocate : Mr. K.K. Rawal, Public Prosecutor, for the State; Mr. Kishan Bansal, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Mr. P.K. Lohra, J. - Accused-petitioner has laid this petition under Section 482 Cr.P.C. to question legality and propriety of impugned orders dated 26th of May 2016 and 3rd of December 2015 passed by Addl. Sessions Judge, Bhadra, District Hanumangarh and orders dated 21.09.2015 and 06.04.2015 passed by Addl. Chief Judicial Magistrate, Bhadra, District Hanumangarh.

2. The bare necessary facts for the purpose of this petition are that second respondent complainant filed a complaint against petitioner before the learned Addl. Chief Judicial Magistrate, Bhadra (for short, "learned trial Court") under Section 138 of the Negotiable Instruments Act, 1884 (for short, "Act"). In the complaint, it is alleged by the complainant that petitioner took a loan of Rs.4 lakhs from him and in order to pay the loan gave him Cheque No.887599 dated 12th of February 2015 payable at Oriental Bank of Commerce, Branch Bhadra. It is further averred in the complaint that when the complainant presented the said cheque for encashment, the same was dishonoured by the Bank by assigning the reason of insufficiency of fund in the account of the petitioner. The learned trial Court took cognizance for the offence under Section 138 of the Act against the

petitioner by its order dated 6th of April 2015. Being aggrieved by the said order, petitioner filed a revision petition before the Addl. Sessions Judge, Bhadra (for short, "learned revisional Court) and the learned revisional Court dismissed the revision petition by its order dated 3rd of December 2015. Subsequent to that, the learned trial Court read out substance of accusation to the petitioner on 16th of June 2015 and recorded evidence of the complainant. The grievance of the petitioner is that the learned trial Court again read out substance of accusation to the petitioner by order dated 21st of September 2015 which is a clear case of abuse of process of the Court. Be that as it may, the petitioner assailed the order dated 21st of September 2015 before the learned revisional Court and the learned revisional Court dismissed the revision petition by its order dated 26th of May 2016.

3. I have heard learned counsel for the petitioner, perused both the orders passed by the learned revisional Court and thoroughly scanned the material available on record.

4. At the outset, it may be observed that the petitioner has misconstrued the powers of this Court under Section 482 Cr.P.C. by challenging two orders passed by the revisional Court in one petition. Sans technicalities, the Court has made sincere endeavour to examine both the orders passed by the revisional Court. The first order was passed on 3rd of December 2015 whereby learned revisional Court declined to interfere with the order of cognizance passed by the trial Court. As regards the second order, the learned revisional Court has observed that the learned trial Court has read out the substance of accusation denovo for rectifying a bona fide error inasmuch as the earlier order by which substance of accusation was read to the petitioner is not signed by the Presiding Officer. Therefore, considering the bona fide error on the part of the presiding officer of the Court, the learned revisional Court has declined to interfere with the de-novo reading out substance of accusation to the petitioner by the learned trial Court. As regards cognizance taken by the learned trial Court and affirmed by the revisional Court, suffice it to observe that the learned trial Court has not committed any manifest error and as such the learned revisional Court has rightly declined to interfere with the said order. There remains no quarrel that the word "cognizance" has esoteric or mystic significance in criminal law and procedure. It merely means "become aware of" and when used with reference to a Court or Judge "to take notice of judicially".

5. Now advertent to the reading out substance of accusation de-novo, the learned trial Court has acted bona fide in view of the fact that the earlier order whereby substance of accusation was read out to the accused petitioner, was not signed by the presiding officer and therefore in that background the learned trial Court resorted to Section 216 Cr.P.C. which empowers the Court to alter or amend charge at any time before judgment is pronounced. Considering that aspect of the matter, learned revisional Court has also declined to interfere with the order of reading out de-novo substance of accusation to the petitioner. In

totality, in my considered opinion, present one is not a fit case wherein inherent powers are to be exercised. It is also noteworthy that reading out denovo substance of accusation has not prejudiced the accused petitioner in any manner.

6. It is trite that jurisdiction of this Court under Section 482 Cr.P.C. to correct judicially the judgment of the lower Court is a very exceptional jurisdiction which should be exercised in the most exceptional cases, the rarest of cases. Thus, I am unable to find any semblance of proof about abuse of process of any Court in this matter which is to be prevented by exercising inherent powers. Moreover, the impugned orders have not occasioned failure of justice.

7. Resultantly, the petition fails and same is hereby dismissed summarily.