
(2013) 01 DEL CK 0188

In the Delhi High Court

Case No : Criminal M.C. 2985 of 2011 and Criminal M.A. No. 10534 of 2011

Anita Sharma

APPELLANT

Vs

State NCT of Delhi and Another

RESPONDENT

Date of Decision : 14-01-2013

Acts Referred:

Citation : (2013) 2 AD 175 : (2013) 2 JCC 130

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Advocate : Yashpal Singh, for the Appellant; M.N. Dudeja, APP for the State and Mr. Surendar Kumar Sethi -Respondent No. 2 in person, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Garg, J.—Petition u/s 482 Cr. P.C. has been preferred by the petitioner for quashing of the summoning order dated 09.06.2009 passed by the Metropolitan Magistrate, Delhi in C.C. No. 3102/2009 titled Surender Kumar Sethi Vs. M/s. Ambica Research and Development Pvt. and the consequent proceedings. I have heard the learned counsel for the petitioner and the respondent No. 2 in person. Contention of the learned counsel for the petitioner is that after the issuance of cheque for a sum of Rs. 29,893/- to respondent No. 2 as salary for the month of February, 2009, Rs. 10,000/- in cash were paid on account of part payment of salary for the month of February, 2009. Respondent No. 2 did not return the cheque in question despite promise. The petitioner was ready and willing to pay the balance amount of Rs. 19893/- to respondent No. 2 by way of demand draft, copy of which has been placed on record. The respondent No. 2 did not accept the said amount and filed complaint u/s 138 and 141 of Negotiable Instruments Act alleging that the amount of Rs. 1,24,406/- was due to him. Learned counsel for the petitioner has relied upon the authorities Alliance Infrastructure Project Pvt. Ltd. and Others Vs. Vinay Mittal, and Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, .

2. Respondent No. 2 contended that Rs. 10,000/- were paid as expenses and

were not part salary amount for the month of February, 2009.

3. I have considered the arguments and have examined the record. It reveals that the complaint u/s 138 of Negotiable Instruments Act was filed by respondent No. 2 when the cheque No. 459428 dated 07.03.2009 for a sum of Rs. 29,893/- issued in his favour by the petitioner was dishonoured on presentation. Vide order dated 09.06.2009, after going through the pre-summoning evidence filed by way of affidavit, documents, the Trial Court found that prima facie offence u/s 138 and 141 of the Negotiable Instruments Act was made out against the petitioner. The petitioner was summoned on 25th July, 2009. Aggrieved with the said orders, the petitioner has filed the petition for quashing the summoning order.

4. It is not disputed that account payee cheque bearing No. 459428 for the sum of 29,893/- dated 07.03.2009 was issued in favour of respondent No. 2 for the salary for the month of February, 2009. It was a post dated cheque and was delivered to respondent No. 2 on 28th February, 2009. Admittedly, on presentation the cheque was dishonoured. After dishonour of the cheque, respondent No. 2 was within his rights to present the proceedings under Sections 138 /141 of Negotiable Instruments Act 1881. The petitioner did not put appearance pursuant to the summoning orders. In the present petition he has claimed that Rs. 10,000/- were paid in cash to respondent No. 2 towards the part payment in relation to the cheque in question on 30.09.2009. The respondent No. 2 has admitted receipt of 10,000/- in cash but has stated that it was not towards part payment of amount/cheque in question. Rather it was the payment towards expenses incurred by him. In the complaint case also respondent No. 2 claimed a total amount of Rs. 1,24,406/- as due from the petitioner. The plea taken by the petitioner in the present petition is a matter of fact/defence which requires to be proved before the Trial Court. This controversy regarding the nature of payment of Rs. 10,000/- cannot be adjudicated in the present writ proceedings. The petitioner has not produced on record any cogent document to ascertain that this payment of Rs. 10,000/- was part payment towards the cheque amount issued to respondent No. 2. Complaint filed under Sections 138 /141 Negotiable Instruments Act prima facie discloses the commission of offence and the impugned order based upon the contents of the affidavit and documents cannot be termed as illegal or irregular. Where prosecution depends largely on a question of fact u/s 482 Cr. P.C. the court should not interfere as it would be primarily and essentially within the domain of the criminal court where the prosecution is pending to arrive at its own conclusion on appreciation of entire evidence. This Court should not by using inherent power disturb the findings of fact of the lower court. In the light of the above discussion, the petition lacks merit and is dismissed. Crl. M.A. No. 10534/2011 also stand disposed of.