(2002) 05 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 13135-M of 1999

Anjani Singla APPELLANT

Vs

The Kotkapura Coop. Spinning Mills Ltd. RESPONDENT

Date of Decision : 17-05-2002

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2002) 3 RCR(Criminal) 769

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : Rakesh, for R.K. Jain, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

V.M. Jain, J.—This is a petition u/s 482, Cr.P.C, filed by the accused petitioner seeking quashment of the criminal complaint u/s 138 of the Negotiable Instruments Act (hereinafter referred to as the Act) and summoning order dated 15.2.1999, copy Annexure P4, summoning the petitioner as an accused in the said complaint.

2. Annexure PI is the copy of the complaint u/s 138 of the Act filed by The Kotkapura Coop. Spinning Mills Ltd., as the complaint against the petitioner. In the said complaint, it was alleged that the complainant had business dealings with the accused and that the accused was under liability to the tune of Rs. 8 lacs towards the complainant and that too to repay the said liability, the accused had issued cheque dated 26.5.1998 in favour of the complainant for Rs. 8 lacs and when the complainant presented the said cheque for encashment, the same was returned vide memo dated 10.11.1998, duly dishonoured as there were insufficient funds in the account of the accused. It was alleged that accused No. 1 is the company and accused No. 2 being its Managing Director was fully responsible for the conduct of the business of accused company No. 1. It was alleged that, in fact, cheque in question was also signed by accused No. 2. It was further alleged that on the dishonour of the cheque, the complainant issued

telegram to the accused on 19.11.1998 apprising the accused of the dishonour of the cheque and requesting him to make the payment. It was alleged that the message was also conveyed on telephone to accused No. 2. However, the accused failed to make the payment within 15 days "from the dishonour of the cheque". Annexure P2 is the copy of the statement of PW1 S.D. Kapoor, Chief Executive of the complainant, during the preliminary evidence. Annexure P3 is the copy of the telegram which reads as under :

"YOUR RUPEES EIGHT LAC CHEQUE PRESENTED & BOUNCED COME IMMEDIATELY TO AVOID LEGAL ACTION."

3. Annexure P4 is the copy of the summoning order dated 15.2.1999, vide which the petitioner was summoned as an accused.

4. In the petition u/s 482, Cr.P.C., filed by accused petitioner Anjani Singla, it has been alleged that even as per the allegations in the complaint and the statements of PW1 S.D. Kapoor, the complainant had not issued and served any notice upon the accused, as required u/s 138 of the Act. It was alleged that the Judicial Magistrate treating the telegram Annexure P3 as requisite notice, had ordered summoning of the petitioner as accused. It was further alleged that complaint could be filed only after the expiry of period of 15 days of the receipt of notice, whereas in the present case no notice was issued and the question of making the payment would not arise. It was accordingly prayed that complaint and the summoning order be quashed.

5. Notice was ordered to be issued to the respondent and further proceeding were stayed. As per report of the office, service was complete. However, neither any one had put in appearance on behalf of the respondent nor any reply was filed.

6. I have heard the learned Counsel for the petitioner and have gone through the record carefully.

7. u/s 138 of the Act, it is provided that the payee or holder in due course of the cheque, as the case may be, is required to make a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within f 5 days of the receipt of information by him from the Bank regarding the return of the cheque as unpaid and it would be an offence u/s 138 of the Act in case the drawer of the said cheque fails to make the payment of the said amount of the money to the payee or as the case may be to the holder in due course of the cheque, within 15 days of the receipt of the said notice. In the present case, as referred to above, no notice as contemplated u/s 138 of the Act was ever issued by the complainant to the accused. Even as per the complaint, Annexure PI, only a telegram was issued calling upon accused No. 2 to make the payment and besides that "a message was also conveyed on telephone". Furthermore, it was alleged that the accused failed to make the payment "within 15 days from the dishonour of the cheque". Even as per the statement, copy Annexure P2, made by PW1 Mr. S.D. Kapoor, Chief Executive of the complainant,

on the dishonour of the cheque, he had sent a telegram to the accused informing about the dishonour of the cheque, the officecopy of which was Annexure P4 and its certified copy was Annexure P5. He had further stated that the payment was also requested to the accused by him on telephone, but the accused had not made the payment.

8. As referred to above, as per the telegram, copy Annexure P3, the accused were informed that the cheque was presented and bounced and they were asked to come immediately to avoid legal action. Even if this telegram is treated as notice, still this notice would not meet the requirements of Section 138 of the Act. In the said telegram, neither there is any reference to Section 138 of the Act, nor there is any demand for payment of the amount of the cheque. On the other hand, the accused were only informed about the dishonour of the cheque and they were asked to come immediately to avoid legal action. The assertion made in the complaint and in the statement of PW 1, copy Annexure P2, that the accused were also requested on telephone to make the payment, in my opinion, would also not meet the requirement of Section 138 of the fact, inasmuch as the notice is required to be "in writing". However, the demand on telephone could not be termed as notice in writing.

9. In my opinion, the filing of the complaint against the accused was abuse of the process of law as the same was filed without complying with the provisions of Section 138 of the Act. Furthermore, it appears that the learned Magistrate had passed the summoning order dated 15.2.1999, copy Annexure P4, without any application of mind. Learned Magistrate had failed to consider that no notice as required u/s 138 of the Act was given to the accused and in the absence thereof, there would be no offence u/s 138 of the Act, even if cheque was dishonoured. Furthermore, in the complaint, copy Annexure PI, itself, it is mentioned that the accused had failed to make the payment "within 15 days of the dishonour of the cheque". There is no such requirement u/s 138 of the Act to make the payment within 15 days of the dishonour of the cheque. On the other hand, u/s 138 of the Act, the complainant was required to give notice in writing within 15 days of the receipt of information from the Bank regarding the dishonour of the cheque and thereafter the accused could make the payment of the said amount within 15 days of the receipt of the said notice and if the accused had failed to make the payment within 15 days of the receipt of the notice, then and only then it would be an offence u/s 138 of the Act. In the present case, there is no allegation that any notice was sent or that the accused had failed to make the payment within 15 days of the receipt of the said notice. That being so, in my opinion it could not be said that any offence u/s 138 of the Act was made out.

For the reasons recorded above, the present petition is allowed and the criminal complaint and all subsequent proceedings taken thereon, including the summoning order dated 15.2.1999, copy Annexure P4 are quashed in toto.