

(2001) 08 DEL CK 0042

In the Delhi High Court

Case No : Criminal M. (M) 4750 of 2000

Archana Publication Pvt. Ltd.

APPELLANT

Vs

State of Delhi and another

RESPONDENT

Date of Decision : 01-08-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 397(3), 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2002) 1 CivCC 277 : (2001) 93 DLT 225 : (2002) 64 DRJ 698 :
(2002) 1 RCR(Criminal) 36

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : Sh. P. Norula, for the Appellant; Sh. M.N. Dudeja and Sh. Dinesh K. Gupta, for the Respondent

Final Decision : Allowed

Judgement

K.S. Gupta, J.—In this petition u/s 482 Cr.P.C. filed by the petitioner company through its director Mrs. Archana Sukhija it is, inter alia, alleged that a complaint u/s 138 of the Negotiable Instruments Act, 1881 (for short "the Act") was filed by respondent No.2 on the ground of a cheque for Rs.40,000/- issued by petitioner company having been dishonoured for insufficient funds. At the stage of notice u/s 251 Cr.P.C. it was contended before the Trial court that complaint filed on 11th July 1997 was barred by limitation. Complaint is based on third demand notice dated 27th May 1997 served by respondent No.2 on the petitioner. Respondent No.2 had previously served demand notices dated 13th January 1997 and 12th March 1997 on the petitioner. Said objection was, however, repelled by the Trial court by the order dated 17th August 1998. Thereafter another application for dropping proceedings was filed by the petitioner which came to be dismissed on 24th July 2000. Criminal Revision filed against the later order was dismissed as withdrawn on 6th December 2000. It is further alleged that Trial court had failed to consider that respondent No.2 did not have cause of action to file the present complaint in view of the decision in

Sadanandan Bhadran Vs. Madhavan Sunil Kumar, . It was prayed that complaint may be quashed.

2. I have heard Sh. P. Norula for petitioner, Sh. Dinesh K. Gupta for respondent No.2 and Sh.M.N.Dudeja for respondent No.1-State and have also been taken through the record.

3. It is not in dispute that prior to filing of complaint against the petitioner company and its said director, the respondent No.2 had served three notices dated 13th January 1997, 12th March 1997 and 27th May 1997. Copies of these notices are placed on pages 50, 70 and 18 respectively on the file. Copy of the order dated 17th August 1998 referred to in the petition is placed at pages 20 to 22 while that of order 24th July 2000 at page 23. Copy of yet another order dated 6th December 2000 passed in Criminal Revision is at page 23-A on the file. In terms of aforesaid 3 demand notices sent through counsel the respondent No.2 had called upon the petitioner and its said director to make payment of cheque No.197581 dated 30th December 1996 for a sum of Rs.40,000/- within 15 day of the receipt of the notice(S). Bare perusal of said order dated 24th July 2000 would reveal that the application filed by petitioner company for recalling the summoning order was dismissed on the ground that court did not have the power to review its order. Further, bare reading of another order dated 6th December 2000 would show that Criminal Revision filed against the order dated 24th July 2000 was got dismissed as withdrawn by the petitioner company.

4. Submission advanced on behalf of respondent No.2 was that the petitioner company in order to discharge its liability issued 3 cheques for Rs.30,000/-, Rs.36,813/- and Rs.40,000/- and all these cheques on presentation were dishonoured for want of sufficient funds. In response to first notice dated 13th January 1997 the petitioner through its director orally requested respondent No.2 to re-present said 3 cheques. On presentation cheque for Rs.30,000/- was honoured while remaining two were dishonoured. This resulted in issuing of second notice dated 12th March 1997. Again respondent No.2 was requested to present the two cheques. On re-presentation, cheque for Rs.36,000/- was honoured while cheque for Rs.40,000/- dishonoured. This gave rise to issuing of third notice dated 27th May 1997 by respondent No.2 to the petitioner company and its said director. Failure to make payment of the amount of said cheque within 15 days of the receipt of notice dated 27th May 1997 by the petitioner company and its said director had furnished fresh cause of action to file complaint to respondent No.2. As part of this submission, relying on the decision in Deepti alias Arati Rai Vs. Akhil Rai and Others, it was also contended that present petition is not legally maintainable it being in the nature of second revision. Submission, however, is without any merit. As noticed above, aforesaid demand notices dated 13th January 1997, 12th March 1997 and 27th May 1997 pertain to the same cheque No.17957 for Rs.40,000/-. In the decision in Sadanandan Bhadran's case (supra) it was held that a complainant cannot create successive causes of action with the same cheque. If no complaint is filed

on the first cause of action the payee is disentitled to create another cause of action to file a complaint for the purpose of launching a prosecution on it. Obviously, the complaint in this case which is based on cause of action furnished by demand notice dated 27th May 1997 instead of 13th January 1997 is not legally maintainable and thus deserves to be quashed u/s 482 Cr.P.C. Bar created by section 397(3) Cr.P.C. will not be attracted.

5. Consequently, the petition is allowed and pending complaint bearing No.C-8/349 titled M/s.B & M Corporation vs. Archana Publications Pvt. Ltd and another is hereby quashed.