

(2004) 11 MP CK 0070

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 2924 of 2004

Arihant Fertilizers Ltd.

APPELLANT

Vs

Rahul Builders and Another

RESPONDENT

Date of Decision : 22-11-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2006) 3 BC 110 : (2005) 3 MPLJ 444 : (2005) 4 RCR(Criminal) 186

Hon'ble Judges : S.L. Kochar, J

Bench : Single Bench

Advocate : Abdul Salim, for the Appellant; Amitabh Upadhyaya, Dy.
Government, for Non-applicant No. 2, for the Respondent

Final Decision : Allowed

Judgement

S.L. Kochar, J.

This petition filed u/s 482 of the Code of Criminal Procedure by the applicant against the order dated 9.12.2003 passed by II Additional Sessions Judge, Neemuch in Criminal Revision No. 89/2003 arising out of order dated 24.2.2003 passed by learned Chief Judicial Magistrate, Neemuch.

The facts of the case stated in brief before the Trial Court was that on 11.12.2000, non-applicant No. 1 Rahul Builders filed complaint before the Magistrate under Sections 138, 142 of the Negotiable Instruments Act (hereinafter called as the "Act"). His case is that the applicant issued cheque bearing No. 693336 dated 30.4.2000 for Rs. 1 lac in favour of non-applicant. When the aforesaid cheque was produced for encashment in the Kshetriya Gramin Bank by the non-applicant, the same was returned with the endorsement that the applicant has closed the account. Thereupon, the complainant/non-applicant served a demand notice dated 31.10.2000. The applicant has given a letter to the non-applicant wherein he admitted issuance of cheque to the non-applicant. As the financial position of the applicant was not good, he closed the

account. On 7th July, 2001, after preliminary evidence, the case was ordered to be registered against the applicant on 2nd August, 2001 u/s 138 of the Act. Thereafter, after hearing on the application dated 15.7.2003 moved by the applicant, learned Magistrate dismissed the application of the applicant vide order dated 24.2.2003. Dissatisfied with the aforesaid order dated 24.2.2003, the applicant filed criminal revision before learned II Additional Sessions Judge, who has also dismissed the revision by the impugned order.

Being aggrieved by the aforesaid order dated 9.12.2003, the applicant/ accused has filed this petition u/s 482 of the Code of Criminal Procedure before this Court.

The contention of the Counsel for the applicant is in two-fold. Firstly, the statutory notice as per requirement of Section 138 of the Act demanding payment of amount of cheque within 15 days, was not given by the applicant. Copy of the notice is filed and in the said notice the non-applicant has made the demand in the following terms:

In view of the above, you are requested to remit the payment of my balance bills within 10 days from the date of receipt of this letter, otherwise, suitable action as deemed fit will be taken against you.

The period of 15 days for the payment of cheque amount was not mentioned in the notice sent by the non-applicant/complainant. Secondly, the cheque bearing No. 69-3336 dated 30.4.2000 was for Rs. only one lac. This cheque returned unpaid by the Bank authorities with the plea that the Account No. 1461 has already been closed. Though the cheque was dishonoured for the payment of Rs. 1 lac but by the notice dated 30.10.2000, the non-applicant No. I/complainant has demanded payment of all pending bills which is according to this notice was Rs. 8,72,409/-. In the aforesaid notice it is also not clear that this amount of Rs. 8,72,409/- is inclusive of the amount of dishonoured cheque or after excluding the same. Therefore, the show-cause notice is vague and clearly contrary to the mandatory requirement of Sections 138(b) and 138(c) of the Act, Learned Counsel for the applicant has placed reliance on the judgments passed by Andhra Pradesh High Court in the case of Yankay Drugs and Pharmaceuticals Ltd. v. MA. Citibank II (2001) BC 568 : 2001(3) Crimes 256 and Gopal Debi Ojha v. Sujit Paul I (1997) CCR 249 : 1997(1) Crimes 127.

As against this, learned Counsel for the non-applicants has submitted that the demand made for outstanding amount by the non-applicant No. 1, along with the demand of cheque amount of Rs. one lac, in the said notice dated 31.10.2000, cannot be held illegal, According to him, along with the cheque amount other balance amount can also be demanded in the same notice by the non-applicant No. 1 payee or holder in due course of the cheque. Learned Counsel has also submitted that the complaint was filed within 30 days and even after more than 15 days after the receipt of the notice ibid the applicant/accused has not made the payment. Therefore, non-applicant/complainant has properly complied with the requirement of Section 138 of the Act. Learned Counsel has placed reliance

on the following judgments:

(a) Central Bank of India and Anr. v. Saxons Farms and Ors. I (2001) BC 12 : IV (2000) CCR 115 : 1999 Cri. LJ. 45 71;

(b) P.V.R.S. Manikumar Vs. Krishna Reddy, (c) Kunjan Panicker v. Christudas IV (1997) CCR 207 : 1997(4) Crimes 477.

Having heard learned Counsel for the parties and after perusing the entire record of the case and the judgments relied upon by the Counsel for the parties, this Court is of the view that non-applicant/complainant, in Ac statutory notice demanding payment of all pending bills within 10 days from the date of receipt of the letter sent by him on 31.10.2000 to the applicant, has not complied with the mandatory provisions of Sections 138(b) and 138(c) of the Act, he demanded the payment of amount of pending bills within a period of 10 days, which is clear from the contents of the notice. Having considered the factual aspect of this case and the decisions relied upon by the parties, as referred to hereinabove, the facts of the present case are peculiar to the facts mentioned in the above mentioned judgments. The non applicant/complainant can demand the amount of cheque along with the interest and costs but for all these, he has to give 15 days time to the applicant drawer of the cheque but in the letter dated 31.10.2000 which has been relied by the non-applicant No. 1, as notice under Sections 138(b) and 138(c) of the Act, he has demanded payment of all pending bills within 10 days from the date of receipt of the notice and those pending bills were of Rs. 8, 72,409/-. For the payment of this amount he has given only ten days time which is contrary to the statutory period of 15 days is required under Sections 138(b) and 138(c) of the Act. Therefore, this Court is of the view that non-applicant No. I/complainant has failed to make out prima facie case before the Trial Court for taking cognizance for the offence punishable u/s 138 of the Act hence the same is liable to be quashed. The notice sent by the non-applicant/complainant may be valid for filing the civil suit.

Consequently, the petition is allowed finding the complaint against the applicant contrary to the mandatory provisions of the Act and act of taking cognizance over the same is nothing but clear abuse of process of Court of Law. Hence, the same is hereby quashed under inherent powers u/s 482, Criminal Procedure Code.