

(2010) 08 JH CK 0059
In the Jharkhand High Court

Baidyanath Singh @ Vaidyanath Singh	APPELLANT
Vs	
The State of Jharkhand and Ayodhya Singh	RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2010) 08 JH CK 0059

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Heard Counsel for the petitioner and Counsel for the State as also Counsel for the Opposite Party No. 2.

2. The petitioner in this application has prayed for quashing the order of cognizance dated 16.11.2006 passed in Complaint Case No. C-2/06 whereby the learned court below has taken cognizance of the offence under Sections 420/406 of the Indian Penal Code and Section 138 of the Negotiable Instrument Act against the petitioner.

3. The petitioner has assailed the impugned order of cognizance on the ground that the same has been passed without application of mind and further, that the complainant namely the Opposite Party No. 2 has filed the complaint petition by suppressing material facts and thereby misleading the court below.

4. Learned Counsel for the Opposite Party No. 2, on the other hand, submits that the grounds as raised by the petitioner in this application are totally misconceived and misleading and as a matter of fact, the case pure and simple is that the petitioner had admittedly obtained a loan of Rs. 60,000/- from the Opposite Party No. 2 and towards part re-payment, he had issued a cheque for a sum of Rs. 30,000/- with the assurance that the cheque would be encashed by the bank and that the petitioner has sufficient funds in his account for enabling

payment of the cheque, but when the cheque was produced before the bank for payment, the same was dishonoured on the ground of insufficiency of funds in the account of the petitioner.

5. For better appreciation of the grounds advanced, the statement of facts may be relevant.

The Opposite Party No. 2 had filed a case before the court below on the allegation that the cheque, which the petitioner had issued in favour of the Opposite Party No. 2 for a sum of Rs. 30,000/- towards part payment of the loan which the petitioner had taken from Opposite Party No. 2, was presented at the bank, but was dishonoured on the ground of insufficiency of funds in the account of the drawer of the cheque. After giving notice to the petitioner and upon failure of the petitioner to pay the amount of the cheque as also the amount of loan obtained, the case was filed. The learned court below took cognizance of the offence against the petitioner as mentioned above.

6. While assailing the impugned order of cognizance, learned Counsel for the petitioner would want to explain that as a matter of fact, the Opposite Party No. 2, being in friendly terms with the petitioner had, in course of his frequent visits to the house of the petitioner, dishonestly teared off a leaf of the cheque book of the petitioner and by forging the petitioner's signature, had presented the cheque before the bank but in the meantime, having detected the theft, the petitioner had instructed his banker not to honour any payment on the basis of the stolen cheque. The bank upon acknowledging the instructions, had acted accordingly by refusing to pay the cheque amount presented by the Opposite Party No. 2 and for the relevant bank transactions the bank had also deducted a sum of Rs. 34/- from the petitioner's account.

7. The above statements appear to be the grounds of defence which the petitioner intends to take in his case. Such grounds of defence could be appreciated only by the trial court in course of trial and upon taking evidence. At the stage of cognizance, the Magistrate was obliged only to consider the statements and allegations contained in the complaint and the statements of the complainant and his witnesses recorded during enquiry and to assess as to whether on the basis of the materials available, prima facie case for the offence is made out or not.

In the instant case, on the basis of the statements contained in the complaint petition and the statements of the complainant and his witnesses recorded on solemn affirmation, the court below has found material enough to take cognizance for the offences. There appears therefore no illegality or infirmity in the impugned order of the court below.

It further appears that after the petitioner's bail bond was cancelled on 22.12.2006 and the warrant of arrest issued against him, the petitioner managed to obtain an order of stay of the execution of the warrant of arrest. The order of stay as granted by this Court on 06.02.2007, was only up to the date of

appearance of the Opposite Party No. 2 to whom notices were issued. The Opposite Party No. 2 had filed his appearance after receipt of notice, on 26.03.2007. Thus, the order of stay did not continue since after the date of appearance of the Opposite Party No. 2 in this proceeding. Yet, the petitioner has not appeared before the trial court till date and has been evading his appearance for no justified reasons.

8. There being no merit in this application, the same is dismissed.

9. The petitioner is directed to surrender himself before the trial court within ten days from the date of this order failing which, the trial court shall be at liberty to take appropriate steps in accordance with law for securing the attendance of the petitioner for facing trial in the case pending before the court below.