(1998) 05 P&H CK 0128

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 18660 of 1997

Balwinder Singh APPELLANT

Vs

Punjab and Sind Bank RESPONDENT

Date of Decision : 18-05-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1998) 3 CivCC 408 : (1999) 4 RCR(Criminal) 380

Hon'ble Judges : K.K. Srivastava, J

Bench : Single Bench

Advocate : T.P.S. Tung, for the Appellant; I.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Srivastava, J.—By mains of this petition filed u/s 482 Cr. P.C. the petitioners seek the quashing of complaint (copy Annexure PI) lodged by the respondent Punjab and Sind Bank and order of summoning (copy Annexure P2) passed by Shri K.C. Gupta, Judicial Magistrate 1st Class, Gudaspur.

2. The petitioners are alleged to have issued a cheque for a sum of Rs.20,000/- in favour of the respondent Punjab and Sind bank, which was dishonored due to insufficient funds. The petitioners contend that a request was made to the respondent bank to lake a draft for Rs.20,000/- and to settle the dispute but the respondent did not agree to accept the draft of the amount of cheque. In order to show the bonafides, the petitioners got a draft prepared for a sum of Rs.20,000/- copy of which is Annexure P3. It is further submitted that the petitioners are still ready to handover the draft to the respondent. The quashing of the FIR is sought on the ground that the cheque was issued by one of the partners of the firm and the other partners have nothing to do with the issuance thereof. The other ground taken is that the complaint was based on the fact that the cheque was presented twice in order to gain the period of limitation, which was impermissible as per law settled by this Court:. Thus, the proceedings arising out of the impugned complaint arc illegal and an abuse of the process of

the Court. Yet another ground on which the complaint is sought to be quashed is that the petitioners No.2,3 and 4 have not been served with the notice.

3. Notice was issued to the respondent/Bank. No reply was filed on behalf of the respondent.

4. I have heard the learned counsel for the petitioners and learned counsel for the respondent. I have carefully perused the record of the case.

5. The main ground for quashment of the impugned complaint is bar of limitation inasmuch as the contention of the petitioners is that the cheque cannot be presented twice only to gain the period of limitation. Apart from it, it has been contended that the petitioners are ready and willing to pay the amount of cheque by means of a draft dated 12.8.1997 for a sum of Rs.20,000/-(photo copy of the draft, AnnexureP3).

6. The learned counsel for the respondent/Bank has relied upon a decision of this Court in M/s Compact Disc India Ltd. & Others v. Contour Advertising (P) Ltd., 1997 ISJ (Banking) 17, wherein the plea raised by the petitioner about payment of the amount of cheque, which bounced on presentation with the bank, was repelled and it was held that it goes without saying that once an offence has been committed and a complete offence, merely by making the payment will not put an end to the same. It may effect the gravity of the .said offence, it was held that this was not the ground to quash the proceedings:

7. In the instant case, the offer to pay the amount of the disputed cheque, which was bounced on presentation, is to be considered by the trial Court in the light of the decision rendered in the case of M/s Compact Disc India Ltd. (supra).

8. A perusal of the complaint will go to show that the firm M/s Friends Dharm Kanda had taken a loan from the complainant-bank on 24.10.1989 amounting to Rs. 1,65,000/-. At the time of advancement of the loan, the firm had executed the relevant documents through its partners i.e. accused No. 1 to 4 in favour of the bank. A sum of Rs.3,69,118/- was outstanding against the firm with interest calculated upto 31.3.1995. The firm through its partner Shri Balwinder Singh, accused No. 1 issued a cheque No. 1256137 on 7.6.1995, which was dishonored and returned with a memo dated 7.6.95 showing that there were insufficient funds in the credit of the firm. A notice was served on accused No. 1 to 4, but they did not turn up to discharge their liability. In para 5 of the impugned complaint, it was averred that on 6.9,1995 the aforesaid cheque dated 30.5.1995 was again presented before the bank for clearance, but it was again dishonored vide memo dated 6.9.1995 for insufficient funds. Photo copies of the aforesaid memos dated 7.6.95 and 5.9.95 were annexed with the complaint. A legal notice was issued to the accused No. 1 to 4 on 13.9.1995, but they did not appear within the stipulated period of 15 days to clear the liability for payment. It was alleged that the accused committed criminal breach of trust and misappropriated the protective rights of the complainant-bank. The learned Judicial Magistrate 1st Class considered the evidence led by the bank and the averments made in the

complaint while passing the order of summoning (copy Annexure P2) and held in para 4 as under:

From the documents, placed on record, a prima facie case for summoning the accused u/s 138 of the Negotiable Instruments Act is made out. However, no offence u/ s 405,418,406 and 420 of the IPC is made out and therefore, the complaint under these offences is dismissed. Now accused be summoned u/s 138 of the Negotiable Instruments Act on PF and copy of complaint for 19.4.1996.

A perusal of the complaint will got to show that the presentation of the disputed cheque for the second time was on account of the request made by the accused. Balwinder Singh with the bank. The accused cannot, therefore, take any advantage, at this stage in the present complaint, of the presentation of the cheque in September, 1995 as the same was done at their request. This is a question of fact, which is to c gone into by the trial Court.

In view of the foregoing discussion, I find no merit in this petition, which is dismissed.