

(2011) 10 RAJ CK 0071

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 213 of 2008

Bhagwana Ram and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 406, 418, 419, 420

Citation : (2012) 1 RLW 620

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : H.S. Sidhu, for the Appellant; A.R. Nikub, Public Prosecutor, B.S. Bhati and Rajesh Panwar, for the Respondent

Judgement

Sandeep Mehta, J.—The aforesaid miscellaneous petition has been filed u/s 482 Cr.P.C. for quashing of FIR No. 174/2007 registered at the Police Station, Pilibanga, District Hanumangarh, for the offences under Sections 406, 419, 420, 467, 468, 471 and 120B, IPC. Succinctly stated, the facts of the case, relevant and necessary for the disposal of this miscellaneous petition are that petitioner No. 1 Bhagwana Ram filed a complaint against respondent No. 2 Manjeet Singh in the Court of the learned Judicial Magistrate, Pilibanga, District Hanumangarh in June 2007 in relation to bouncing of cheques Nos. 437767 and 437768 dated 17.2.2007 for a sum of Rs. 65,500/-. After giving due notice u/s 138 of the Negotiable Instruments Act, the cognizance was taken against respondent No. 2 Manjeet. Singh on the very day and process was issued for the appearance of respondent No. 2 Manjeet Singh.

2. Respondent No. 2 Manjeet Singh, on the other hand, approached the very same court by way of filing a complaint against the petitioners herein with the allegation that he was doing the business of "Aadhat" with the firm Ramana Trading Company, of which petitioner No. 2 Narendra Singh is the proprietor. He further alleged that the other co-accused Baltej Singh and Gurdeep Singh

(petitioners No. 3 and 4 herein) were also working in the very same firm. It has further been alleged that the complainant had given a diary to petitioner No. 2 Narendra Singh for the purpose of entries of business transactions of the crops etc. and the complainant discontinued the "Aadhat" with the firm in August, 2005. It has further been alleged that when the "Aadhat" was started, Narendra Singh got opened an account of the complainant in Punjab National Bank, Pilibanga Branch, and after opening the said account, the blank cheque book thus issued bearing the signatures of the complainant was kept by Narendra Singh in trust. It is further alleged that when the complainant terminated the "Aadhat" with accused Narendra Singh in August 2005 at that time Narendra Singh retained the two blank signed cheques from the cheque book of Manjeet Singh's bank account bearing Nos. 437767 and 437768. The complainant-respondent No. 2 has further alleged that he requested Narendra Singh to return his two blank signed cheques on numerous occasions but Narendra Singh kept avoiding returning the same. The complainant further alleged that he went to the shop of Narendra Singh along with one Gurdeep Singh a month prior to filing of the complaint and repeated his request for return of the cheques, on which Narendra Singh agreed that the cheques were lying with him and the same would be returned. Thereafter the complainant conducted a Panchayat in Mandi, Pilibanga on 27.4.2007 in which Narendra Singh, Baltej Singh and Gurdeep Singh are alleged to have agreed that the cheques, as referred to above were with them and thereafter the accused threatened the complainant that they would use the cheques through some of their friend or relative. The complainant accordingly issued a notice to the aforesaid Narendra Singh through his counsel on 16.5.2007 requesting for return of the blank signed cheques but no reply was given to the said notice. The complainant further alleged that his account had already been closed in March 2006. Thereafter the three accused, referred above, connived with petitioner No. 1 Bhagwana Ram and misusing one of the blank signed cheques of the complainant, presented the same through Bhagwana Ram after making fraudulent entries in the same. The complainant has alleged that he does not know any person named Bhagwana Ram and the accused persons connived together to misuse the signed cheque of the complainant being held by accused Narendra Singh. It is alleged that Balwant Singh was created as a fictitious holder of the cheque and thereafter a false notice was issued to the complainant u/s 138 of the Negotiable Instruments Act. The complainant alleged that after receiving the notice, he again got conducted a Panchayat in relation to the notice on 17.5.2007 and again in the panchayat, Narendra Singh, Baltej Singh and Gurdeep Singh agreed to have misused the cheques in connivance with aforesaid Bhagwana Ram (petitioner No. 1). Thus, as per the complainant, the accused persons have committed the acts of cheating and forgery in relation to the cheque in issue. The said complaint was sent to the Police Station, Pilibanga for investigation u/s 156(3) Cr.P.C. where FIR No. 174/2007 has been registered and investigation ensured for the offences under Sections 406, 418, 420, 467, 468, 471 and 120B, IPC.

3. The petitioners, who are the accused in this F.I.R., have approached this Court by way of present miscellaneous petition challenging the FIR No. 1274/2007 referred to above and all the subsequent proceedings in relation thereto.

4. Praying for the quashing of the FIR impugned, counsel for the petitioners submitted that in this case the complainant-respondent No. 2 had given the cheque in question to the petitioner No. 1 Bhagwana Ram against a loan taken by him in the year 2006. He submitted that the loan document was also executed on 17.5.2006 in the presence of witnesses and the same was also signed by the complainant. It has been submitted that the loan document dated 17.5.2006 refers to giving of cheque No. 437768 for a sum of Rs. 6,25,000/- and that the specific date of the cheque (17.2.2007) has been mentioned in the loan document dated 17.5.2006. He further submitted that the cheque was presented in the bank in the month of May 2007 and on its bouncing, a notice u/s 138 of the Negotiable Instrument Act was given to the complainant. The notice was received by the complainant on 14.5.2007 and thereafter the complainant started taking evasive actions in relation to avoiding the payment of cheque being validly held by the petitioner No. 1. It has further been submitted that since the FIR in question has been registered after receiving the notice u/s 138 of the Negotiable Instruments Act, the proceedings as set-out in the FIR are nothing but a counter-blast to the proceedings u/s 138 of the Negotiable Instruments Act being undertaken by petitioner No. 1 Bhagwana Ram against Manjeet Singh, the complainant. It has further been submitted that so far as petitioners No. 2 to 4 are concerned, there is no reason to permit the FIR to continue against them because admittedly when the dealing between firm of the complainant and petitioner No. 2 Narendra Singh ended in the year 2005 itself then there could not have been any reason for the year 2005 itself then there could not have been any reason for the petitioners No. 2 to 4 to have retained the cheque in question. In support of the miscellaneous petition, certain documents have been filed, one of them being receipt/loan document dated 17.5.2006 alleged to have been issued by the complainant-respondent No. 2 in favour of petitioner No. 1 Bhagwana Ram for the purpose of showing the receipt of a loan of Rs. 6,25,000/- and simultaneously regarding handing over of cheque No. 437768 dated 17.2.2007 to Bhagwana Ram towards the repayment of said loan. The second document is the document dated 23.11.2005 whereby "Aadhat" transactions between the two parties, i.e. Gurdeep Singh and Manjeet Singh, have been concluded and "No Dues Certificate" has been issued by the complainant Manjeet Singh, In support of the arguments, reliance has been placed on the decisions of the Hon'ble Supreme Court in Sunil Kumar Vs. M/s. Escorts Yamaha Motors Ltd. and Ors, , Punjab National Bank and others Vs. Surendra Prasad Sinha, and of this Court in Raghuveer Singh vs. State of Rajasthan & Anr., 2006 (2) NIJ 197.

5. Per contra, Mr. Rajesh Panwar, counsel for the complaint-respondent No. 2, submitted that in this case there is a specific allegation against the petitioners regarding forging the cheque of the complainant and also of committing fraud.

He further submitted that the notice for return of the cheques was given to petitioner No. 2 Narendra Singh in April 2007 and thereafter the cheque had been presented in the bank account of the complainant (which stood closed in 2006) which by itself shows that the cheque was misused by petitioner No. 1 Bhagwana Ram by hatching conspiracy with other three petitioners, i.e. petitioners No. 2 to 4. It has further been submitted that if the petitioner No. 1 Bhagwana Ram was holding the cheque dated 17.2.2007, there could not have been any reason as to why he refrained from presenting the cheque in his bank until May 2007 and it has thus been submitted that the FIR cannot be interfered with because the same ex facie discloses the commission of cognizable offences by the petitioners and as such the miscellaneous petition should be dismissed.

6. I have considered the arguments advanced at the Bar and also considered the FIR impugned and the documents submitted along with the petition.

7. It is true that when a counter FIR in relation to alleged misuse of cheque(s) is filed after bouncing of the cheques and initiation of proceedings u/s 138 of the Negotiable Instruments Act thereon by the person issuing the cheques, such a prosecution should normally not be permitted, but in the present case, there are certain circumstances which create a doubt in the mind of this Court regarding the story as set-up by the petitioners. Firstly, the cheque was admittedly dated 17.2.2007 as per contention of the petitioner No. 1 and the same was presented for encashment on 17.5.2007, i.e. after three months. It is the case of the petitioner No. 1 that the cheque had been given against the loan amount of Rs. 6,25,000/- which was taken from him by the complainant-respondent No. 2. It is no case of the petitioner No. 1 Bhagwana Ram that the complainant was making payment of interest to him. As such, no person of reasonable prudence, in his right mind, would avoid earning interest on a huge loan amount for three months despite having a repayment cheque with himself. Thus, the story of the complainant that the cheque was being held by somebody else (Narendra Singh) and petitioner No. 1 Bhagwana Ram has been created as a fictitious holder of the cheque to misuse the cheque, cannot be said to be without any basis. The correctness of the documents filed by the petitioners in support of their miscellaneous petition is to be examined by the police whilst investigating the matter. The decisions of the Hon'ble Supreme Court, referred to above, are wholly different on facts from the present case and as such the FIR impugned cannot be quashed at the out-set. In the case at hand, an undisputed conclusion cannot be arrived at that the present FIR is a counter-blast to the proceedings u/s 138 of the Negotiable Instruments Act initiated by petitioner No. 1 Bhagana Ram. The matter is such where investigation is required to be done by the police; however at the same time a word of caution is to be added while disposing of the present petition.

8. Accordingly, while rejecting the miscellaneous petition for quashing of the FIR, it is hereby directed that the investigating officer shall first get the signatures/writings on these documents (i) "Aadhat" termination document between the

complainant and Gurdeep Singh dated 23.12.2005 and (ii) the loan agreement dated 17.5.2006, (iii) the writings on the cheque indisputably examined by handwriting expert and if the signatures of the complainant are found to be genuine on these documents then the conclusion of the investigating officer shall be governed by the report of the handwriting expert in relation to these documents.

9. The observations made whilst disposing of the present miscellaneous petition shall not prejudice the trial of the case u/s 138 of the Negotiable Instruments Act going on against the respondent No. 2 in the Court of the Judicial Magistrate, Pilibanga, district Hanumangarh under Sec. 138 of the Negotiable Instruments Act. It may be mentioned here that the three documents in relation where to a direction has been given above for examination by the handwriting expert would have a material bearing on the complaint under Sec. 138 of the Negotiable Instruments Act and it would be advisable for the Court trying the complaint of the N.I. Act. In the event of an application being filed before it by either parties to the complaint to wait for the out-come of the handwriting experts report in the documents in question. This miscellaneous petition and the stay application stand disposed of accordingly.