
(2003) 09 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No's. 37338-M of 2002 and 37326, 37328, 37330, 37334 and 37336 of 2002

Chiman Lal and Others

APPELLANT

Vs

Shree Ganesh Oil Industries

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2004) 2 BC 189 : (2004) 138 PLR 631 : (2004) 1 RCR(Criminal) 325

Hon'ble Judges : K.C. Gupta, J

Bench : Single Bench

Advocate : P.S. Khurana, for the Appellant; Sandeep Khunger, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Gupta, J.—This order shall dispose of the abovementioned seven Criminal Misc. Petitions as the common question of law is involved. The facts have been taken from CrI. Misc. No. 37338M of 2002.

2. This is a petition filed u/s 482, Cr.P.C. for quashing the orders dated 20.9.2000 and 25.2.2002 passed by Sub-Divisional Judicial Magistrate, Fazilka and Addl. Sessions Judge, Ferozepur respectively being unlawful, illegal and contrary to the statutory provisions of law.

3. Briefly stated, the facts are that M/s. Shree Ganesh Oil Industries, Salem Shah Road, Fazilka, through its partner i.e. respondent filed a complaint u/s 138 of the Negotiable Instruments Act (for short, "the Act") read with Section 420, IPC against the petitioner on the ground that there was an account between the parties and the same was squared up on 22.1.1996 and an amount was due to the petitioner, for which he issued cheque No. 324308 drawn of State Bank of Patiala, Fazilka for a sum of Rs. one lakh, which was, however, dishonoured vide order dated 20.9.2000, Annexure P-2. The petitioner was summoned u/s 138 of

the Act. In the presence of the petitioner, preliminary evidence was recorded. Finding a prima facie case, the learned Sub-Divisional Judicial Magistrate gave a notice as to why he should not be convicted and sentenced u/s 138 of the Act vide order dated 20.9.2000.

4. Aggrieved by the said order, the petitioner filed a revision petition, which was dismissed by the Additional Sessions Judge, Ferozepur, vide order dated 25.2.2002, Annexure P-4.

5. Aggrieved by the said order, the petitioner has filed the present Crl. Misc. Petition.

6. I have heard Counsels for the parties and carefully gone through the files.

7. The main plea of the petitioner is that he was not duly served and, as such, there was no occasion to make the payment. He further contended that in Para No. 8 of the complaint, Annexure P-1, it has not been mentioned as to when the notice was served upon the petitioner and, as such, he contended that the complaint is not maintainable. He has drawn my attention to the authority of the Hon'ble Apex Court i.e. Shakti Travel and Tours v. State of Bihar (2000) 4 CCR 121:(2000) 7 SLT 327:2001(1) RCR (Criminal) 465, to contend that if there was no averment in the complaint that notice was served, then the accused could not be prosecuted and proceedings were liable to be quashed. He has also relied upon another authority of Himachal Pradesh High Court i.e. Parmod Kumar v. Subodh Kumar 1997(2) RCR 764 to contend that the complainant had not disclosed the ingredients of Section 138 of the Act in the complaint inasmuch as he has not mentioned as to when the notice, demanding payment was received by the accused, nor this was stated in preliminary evidence, so, the complaint was liable to be quashed. In the present case, Para No. 8 of the complaint is relevant and the same reads as under :

"8. That accordingly a notice of demand dated 4.6.1996 was issued by the complainant through his Counsel which was wilfully avoided by the accused. Copies of the notice, postal receipt and returned notices are attached herewith. Hence, this complaint."

8. Thus, according to said para, the complainant-respondent had mentioned that a notice of demand dated 4.6.1996 was issued by the complainant through his Counsel but the petitioner (accused) had been wilfully avoiding the same. The copies of the notice, postal receipt and returned notices were attached along with the complaint. Thus, it cannot be said that factum of giving notice had not been mentioned in the complaint. Even it is mentioned that it was dated 4.6.1996. However, it was mentioned that the petitioner had wilfully avoided the service of the notice. It was also stated that the address mentioned in the complaint was wrong. The notice was sent to the petitioner on the following address:

"Chiman Lal son of Mr. Amar Lal Gumber, House No. 3286, Opposite Islamia School, Fazilka, Proprietor of Gumber Trading Co., Booth No. 60, Additional New

Grain Market, Fazilka, Distt. Ferozepur."

9. The said address cannot be said to be wrong because the petitioner had filed a revision petition, which is Annexure P-3 dated 13.11.2000, in which he had mentioned the same address as was mentioned in the notice. The notice was received undelivered with the report that the petitioner had left without information. Counsel for the respondent also contended that another notice was also sent to the petitioner at his home address and the same was received with the report that he had gone somewhere without disclosing. It has been observed by the Hon"ble Supreme Court in State of M.P. Vs. Hiralal and Others, , that if a service is being sought to be affected through post and the postal authority had reported that the respondent had obviously managed to have returned with postal remarks "NOT AVAILABLE IN THE HOUSE", "HOUSE LOCKED" and "SHOP CLOSED", then it must be deemed that notices have been served upon the respondents. In the present case, since, the commercial address of the petitioner was correct and the notice had been received unserved with the report that the petitioner had left without information, that means he had avoided the service of the notice. In such circumstances, the notice shall be deemed to have been served upon the petitioner. It has been further observed by the Hon"ble Apex Court in K. Bhaskaran v. Sankaran Vaidhyan Baian and Anr., (1999) SLT 147: IV (1999) CCR 63 (SC) :1999(3) CCC 385 (SC), that if notice was returned unclaimed by the sender, then it would amount to receipt of notice and in such a case reckoning of 15 days would start running from date of return of notice. However, in the present case, the petitioner is alleged to have managed to get it written on the notice that left without information. In such circumstances, prima facie, it must be presumed that he has been served, Anyhow, it is a matter of evidence to be led by the complainant. It has been so held by Karnataka High Court in Fakirappa v. Shiddalingappa and Anr. 2002(1) LJR 72, that the question as to whether notice has been served or not is to be decided on the basis of evidence led during trial and not at the stage of filing of complaint. It has been further observed that the proceedings cannot be quashed on the ground of insufficiency of service of notice without a decision of the Trial Court on this issue. Thus, no case is made out to exercise jurisdiction u/s 482, Cr.P.C.

Hence, all the seven Criminal Misc. Petitions are dismissed.