
(2017) 09 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : 155 of 2016

Devinder Singh

APPELLANT

Vs

Mehar Chand

RESPONDENT

Date of Decision : 01-09-2017

Acts Referred:

Citation : (2017) 09 SHI CK 0004

Hon'ble Judges : Sureshwar Thakur

Bench : Single Bench

Advocate : H.S.Rangra, Rajiv Rai

Judgement

1. During the pendency of the apposite complaint instituted before the learned Judicial Magistrate, Gohar, Mandi, District Mandi, an affidavit borne in Ext.DW-1/A was tendered in evidence by the defendant-accused also one, Ghanshyam Singh who swore it, testified in consonance with the recitals borne therein. With recitals occurring therein, of one Ghanshyam Singh who swore Ext.DW-1/A, holding possession, of, the dishonoured negotiable instrument(s), thereupon through an application cast under the provisions of Section 319 Cr.P.C., provision(s) whereof stand extracted hereinafter, it was canvassed, that, hence with the author of Ext.DW-1/A admitting his guilt in issuing the disputed dishonoured negotiable instrument(s), thereupon the purported incriminatory, role, of the respondent-accused being exculpated, whereas the impleadment of Ghanshayam Singh in the array of accused being imperative. 319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or

summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under subsection (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

2. However, a closest reading of the recitals borne in Ext.DW-1/A make a visible disclosure of its author being delivered, the disputed dishonoured negotiable instrument(s), by one Devender Singh the petitioner accused herein, merely, as a security in respect of sums of money borrowed by him from the author of Ext.DW-1/A, whereafter the author of Ext.DW-1/A narrates therein qua his further handing over the disputed dishonoured negotiable instrument(s), to, the complainant, merely as a security for sums of money borrowed by him from the complainant. Significantly thereupon the counsel for the petitioner accused, submits that hence with its evidently displaying qua non occurrence of any financial transaction(s) inter se the respondent and the complainant, there was obviously, no occasion, for the accused transmitting the disputed dishonoured negotiable instruments vis-a-vis the complainant, rather he contends that the author of Ext.DW-1/A warrants his being added as an accused in the instant complaint. The aforesaid submission warrants rejection, for the reason(s) (a) with a disclosure occurring in Ext.DW-1/A that its author receiving absolutely blank cheques, effect(s) whereof is that the dishonoured negotiable instrument(s), never during the period they purportedly remained in possession of the author of Ext.DW-1/A, hence holding the signatures of the respondent-accused. The further consequence thereof is that the scribing(s) therein of the signatures of the respondent-accused hence occurring only upon the accused obviously holding its possession besides effect thereof, is, of the accused also preceding therewith scribing thereon the details of amounts borne therein, especially, when there is no best evidence comprised in the report of the handwriting expert qua the signatures borne therein and scribing(s) of details of sums of money borne therein, being not authored by the respondent-accused. Prima facie hence the respondent accused is to be concluded to author all writings occurring therein. In aftermath, prima facie the recitals borne in Ext.DW-1/A stand falsified rendering the adding of Ghanshyam Singh in the array of accused, to be unnecessary.

3. Furthermore, the prayer made in the application cast under the provisions of Section 319 Cr.P.C, stood, aptly rejected by the learned trial Magistrate, given

the special procedural mechanism contemplated in Section 138 of the Negotiable Instrument Act, (hereinafter referred to as the Act), in respect of trial of a complaint instituted under the "Act" before the Magistrate concerned, provisions whereof stand extracted hereinafter:- "138 (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee, or as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."

4. Therein exists a mandate in respect of upon evident satiation(s) occurring qua the contemplated statutory pre condition or qua the condition(s) precedent, thereupon alone the Magistrate concerned being empowered to take cognizance upon the complaint. The trite imperative besides peremptory condition warranting absolute compliance, for the Magistrate standing hence empowered to take cognizance upon a complaint lodged under the "Act" in respect of dishonour of negotiable instruments, is, comprised in the factum of the drawer or presenter of the dishonoured negotiable instrument, prior to his, instituting the apposite complaint against the person issuing the dishonoured negotiable instrument, his being mandatorily enjoined to serve a notice upon the errant accused, whereupon the errant accused is called upon to make liquidation(s) of sums of money borne therein, evident failure(s) of liquidation(s) whereof within 15 days of the apposite notice being evidently served upon the accused, alone, fastening the learned trial Magistrate with a jurisdictional empowerment to take cognizance upon the complaint. Evidence in respect of statutory satiations aforesaid occurring hereat, is abysmally amiss, wherefrom an inference is earned of the Magistrate concerned being statutorily barred to take any cognizance vis-a-vis Ghanshyam Singh, by adding him as an accused in the extant complaint. However, in the instant case, even if there is merit in the application, given any purported truthful occurrences in Ext.DW-1/A also with Section 319 Cr.P.C holding a mandate with respect to adding of or arraying of any person/persons as accused in the apposite complaint, even when the complainant has arrived at the stage of adduction of respective evidence(s) thereon, upon, surging forth of clinching evidence qua his/their incriminatory role. Nonetheless any order allowing the apposite application would result in the Magistrate, hence breaching the mandatory statutory conditions aforesaid, whereas compliances therewith are statutorily mandated, theirs" being peremptory conditions precedent, for empowering the Magistrate to take cognizance upon a complaint or the imperative condition(s) precedent(s) occurring in clause (c) of Section 138 of the Act enjoin strict compliance therewith. The special procedural mechanism embodied in the aforesaid statutory provisions, warrant no transgression, dehors provisions existing in Section 319 Cr.P.C., predominantly, when infraction(s) thereof would render vitiated any cognizance taken vis-avis the proposed accused also would result in the accused added in the complaint, being tried de novo, without any legally tenacious cognizance being taken vis-a-vis him, whereas cause(s) of action in respect of incriminatory role(s) vis-a-vis the proposed co-accused, enjoin institution qua him of a fresh validly constituted

complaint. In sequel, the provisions of Section 319 of Cr.P.C. are overridden by the special procedural precursory mechanism(s) envisaged under Section 138 of the Act in respect of a validly constituted complaint besides for a valid cognizance being taken thereon, yet the aforesaid exception(s) therewith, in respect of cognizance(s) vis-a-vis a complaint instituted under Section 138 of the Act, are, confined to natural being(s) or non juristic non corporate entity(s), whereas, subject to just statutory exceptions besides apt statutory provisions, they, may not be applicable vis-a-vis juristic corporate entity(s) or artificial beings/persons. In view of the above, the instant petition is dismissed, so also all pending application(s), if any. Impugned order is maintained and affirmed. No order as to the costs.