
(2004) 08 RAJ CK 0010

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 708 of 2002

Dharmendra Kumbhat and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-08-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2004) 08 RAJ CK 0010

Hon'ble Judges : N.N. Mathur, J

Bench : Single Bench

Advocate : H.M. Saraswat, for the Appellant; M.P. Solanki, for the Non-Petitioner, Mr. J.P.S. Choudhary, for the State, for the Appearing Parties

Final Decision : Allowed

Judgement

N.N. Mathur, J.—By way of instant petition u/s 482 Cr.P.C. the petitioners have challenged the order of the Additional Sessions Judge (Fast Track), Jodhpur dated 26.6.2002 refusing to interfere with the order of the Judicial Magistrate No.3, Jodhpur, dated 22.2.2001 taking cognizance against the petitioner alongwith his wife Smt. Sobha Kumbhat for offence u/s 138 of the Negotiable Instrument Act (hereinafter referred to as "the Act").

2. Briefly stated the facts of the case are that the second respondent Pramod Sharma filed a complaint on 22nd June, 1994 alleging inter alia that the petitioner herein is carrying on the business of chemicals in Chennai in the name of Kumbhat Group of Business. His firm namely K.G.B. India is having its branches at Jodhpur, Delhi and Madras. Both the accused persons are the proprietors of the firm. In the year 1993, the complainant paid a sum of Rs.3,000/- to Smt. Sobha Kumbhat for the printing of polythene bags. In the month of July, 1993, the complainant invested a sum of Rs.5,000/- with K.G.B. India. It was agreed by the accused persons that they will pay 18% interest on the said amount. In total, a sum of Rs.55,800/- was invested. Some more details

of the transaction has been given. Suffice it to say that the accused persons were liable to pay a sum of Rs.59,018/-to the complainant.

3. It is further case of the complainant that Smt. Sobha issued four cheques of different amounts i.e. Rs. 10,000/- dated 1.4.1994, Rs.22,000/- dated 10.4.1994, Rs. 13,000/- dated 15.4.1994 and Rs. 14,018 dated 1.6.1994 under her signatures. All the four cheques were dishonoured by the Bank. After statutory notice, the instant complaint was filed. The learned Judicial Magistrate No.3, Jodhpur has taken cognizance against both the petitioners namely Dharmendra and his wife Smt. Sobha Kumbhat for offence u/s 138 of the Negotiable instrument Act by order dated 22.2.2001 which has been confirmed in revision by the impugned order dated 26.6.2002 passed by the Additional Sessions Judge (Fast Track), Jodhpur.

4. It is contended by the learned counsel that the cheques were not issued by the husband-petitioner as such he is not liable to be prosecuted for offence u/s 138 of the Act. On the other hand, it is submitted that the company as well as the person in charge of and responsible at the time of commission of offence are liable to be prosecuted u/s 138 of the Act in view of the provision of Section 141 of the Act. Thus, the crucial issue which arises for consideration is whether the husband and the wife, the co-accused, can be treated as "an association of individuals" as envisaged in the explanation appended to Section 141 of the Act.

5. I am of the view that the question has to be examined in the context of the facts of each case particularly the averments made in the complaint. As provided u/s 138 of the Act, it is only the drawer of the cheque who can be prosecuted. However, the expression "other association of individuals" used in Section 141 of the Act is of significance. In the facts of the case, the petitioner-husband herein is obviously not a drawer of the cheques and the cheques have been issued by his wife Smt. Sobha Kumbhat. There is no allegation in the complaint to the effect that the husband has been doing the business alongwith his wife and the cheques were issued in discharge of her liability. Thus, in my opinion, the proceeding against the petitioner-husband is not sustainable and the same deserves to be quashed being abuse of process of the court.

6. Consequently, the petition is allowed. The order dated 26.6.2002 passed by the Additional Sessions Judge (Fast Track), Jodhpur and the order dated 22.2.2001 passed by the Judicial Magistrate No.3, Jodhpur in Criminal Case No.2164/95 as against the petitioner Dharmendra stand quashed and set aside.