
(2018) 11 P&H CK 0132

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 33435 of 2016 (O&M)

Dr. Simmi Aggarwal

APPELLANT

Vs

Jarnail Singh

RESPONDENT

Date of Decision : 26-11-2018

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138, 139

Code of Criminal Procedure, 1973 — Section 397, 397(1), 397(3), 397(2), 482, 483

Indian Penal Code, 1860 — Section 406, 420

Citation : (2019) 1 RCR(Cri) 591 : (2019) 2 CriCC 145

Hon'ble Judges : Sudhir Mittal, J

Bench : Single Bench

Advocate : Sunil Chadha, Swati Verma, Varinder Mand

Final Decision : Allowed

Judgement

1. It transpires that agreement to sell dated 24.12.2010, was executed between the complainant-respondent and the father-in-law of the petitioner,

namely, Balwan Singh Manhas (accused No.2 in the complaint under Section 138 of the Negotiable Instruments Act, 1881-hereinafter referred to as

the Act) in respect of land measuring 04 kanals, 12 marlas situated at village Rurka, Hadbast No.330, Tehsil and District Ludhiana. The sale

consideration agreed upon was Rs.78 lacs and Rs.10 lacs was determined as the earnest money. The date for execution and registration of sale deed

was fixed as 10.01.2011. For payment of earnest money, cheque bearing No.732724 dated 24.12.2010, drawn on Oriental Bank of Commerce,

Ludhiana, was issued by the petitioner-accused No.1. The presentation of the said cheque was however, deferred till the second week of January,

2011 by mutual consent. According to the complainant, accused No.2 failed to turn up on 10.01.2011 for execution of the sale deed. Thereafter, the

cheque in dispute was presented, but the same was returned vide memo dated 13.01.2011 with the remarks "payment stopped by drawer".

Thus, a complaint under Section 138 of the Act was filed after service of statutory notice and upon the cause of action having arisen in favour of the complainant.

2. Reply dated 03.02.2011, to the statutory notice issued by the complainant was sent by the accused persons. A copy thereof has been placed on

record with the reply filed on behalf of the respondent-complainant. According to the contents thereof, the land in dispute was ancestral property of

the complainant-respondent and he was not its exclusive owner. Thus, the accused persons asked the complainant to obtain no objection in writing

from the other co-sharers so that physical possession could be taken at the spot. The land was required for the purposes of setting up a factory and

immediate possession was essential. The complainant failed to obtain no objection from the other co-sharers and consequently, failed to handover

possession as he was not in exclusive possession. The complainant was accordingly apprised of the situation and he agreed to return the cheque of

Rs.10 lacs as the agreement had been frustrated. This information was conveyed prior to the date of execution of the sale deed. Thus, the petitioner-

accused No.1 did not have any legal liability to make payment to the complainant.

Since, the cheque was presented despite the complainant-respondent having been informed not to present the same, instructions were issued to the

bank to stop payment.

3. The accused persons were summoned vide summoning order dated 21.02.2011 passed by the JMFC, Ludhiana. The same was challenged vide

CRM-M-12533-2011 and this Court granted stay vide order dated 27.04.2011. This petition was ultimately withdrawn vide order dated 26.08.2014

with liberty to raise all pleas at the time of service of notice of accusation. Consequently, the petitioner and her father-in-law (accused persons) sought

discharge vide application dated 26.02.2015, but the same was rejected by the trial Court vide order dated

20.10.2015. Revision petition against the said order was also dismissed vide order dated 06.08.2016 passed by the learned Addl. District and Sessions

Judge, Ludhiana. The present petition has consequently been filed under Section 482 Cr.P.C for quashing of the complaint as well as orders dated

20.10.2015 and 06.08.2016.

4. At the very outset, learned counsel for the respondent-complainant has challenged the maintainability of the present petition. His contention is that a second revision petition is barred by Section 397(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Cr.P.C."). This bar cannot be overcome by filing a petition under Section 482 Cr.P.C. Reliance has been placed upon a judgment of the Supreme Court in "Rajathi Vs.

C. Ganesan, 1999(3) RCR (Criminal) 581" as well as a number of single Bench decisions of this Court.

5. Learned senior counsel for the petitioner-accused No.1 has controverted the aforementioned submission by arguing that Section 482 Cr.P.C. gives

extremely wide powers to the High Court to prevent abuse of the process of any Court or otherwise to secure the ends of justice and these powers

are not limited by the provisions of the Cr.P.C. Thus, even though, a second revision petition is barred by Section 397(2) Cr.P.C., the High Court can

always exercise powers under Section 482 Cr.P.C. to do complete justice between the parties. In the present case, the petitioner-accused No.1 has

specifically stated in her reply to the statutory notice under Section 138 of the Act that on account of agreement to sell having been frustrated, she

was under no legal liability to make any payment and therefore, initiation of proceedings was a patent abuse of the process of the Court. Reliance has

been placed upon the judgments of the Supreme Court in "Surya Baksh Singh Vs. State of Uttar Pradesh, 2013(4) RCR (Criminal) 880" and

"Krishnan Vs. Krishnaveni and another, 1997(1) RCR (Criminal) 724".

6. A three Judges' Bench of the Supreme Court of India in "Girish Kumar Suneja Vs. C.B.I., 2017(3) RCR (Criminal) 665" has examined

the powers of the High Court under Section 482 Cr.P.C. viz-a-viz Section 397(2) Cr.P.C. After examining the judgments in "Amar Nath Vs. State

of Haryana, (1977) 4 SCC (137)" and "Madhu Limaye Vs. State of Maharashtra, (1977) 4 SCC 551", it has been held that a revision

petition against an interlocutory order is barred by Section 397(2) Cr.P.C. and inherent powers under Section 482 Cr.P.C. cannot be invoked to get

past this bar. However, Madhu Limaye's case (supra) has been quoted with approval, wherein the principle of harmonious construction of statutes

has been invoked to hold that an aggrieved party would not be left remediless

where an interlocutory order causes great injustice to it. In such situations, the High Court would be entitled to invoke its inherent jurisdiction. However, the exercise of the inherent power must be done sparingly and in a circumspect manner.

7. In the case of Krishnan (supra), the Supreme Court was examining the inter-play between Section 397 Cr.P.C and Section 482 Cr.P.C. Madhu

Limaye's case (supra) was considered alongwith V.C. Shukla Vs. State through CBI, 1980(2) SCR 380 (majority view of Four

Judges Bench) and it was held as under:-

14. In view of the above discussion, we hold that though the revision before the High Court under sub-section (1) of Section 397 is prohibited by

sub-section (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous

superintendence of the High Court under Section 483, the High is justified in interfering with the order leading to miscarriage of justice and in setting

aside the order of the courts below. It remitted the case to the Magistrate for decision on merits after consideration of the evidence. We make it clear

that we have not gone into the merits of the case. Since the High Court has left the matter to be considered by the Magistrate, it would be

inappropriate at this stage to go into that question. We have only considered the issue of power and jurisdiction of the High Court in the in the context

of the revisional power under Section 397 (1) read with Section 397(3) and the inherent powers. We do not find any justification warranting

interference in the appeal.

8. The aforementioned view has prevailed in Surya Baksh Singh's case (supra), State through Special Cell, New Dehi Vs. Navjot Sandhu @

Afshan Guru and others, 2003(2) RCR (Criminal 860 and Prasanta Kumar Dey Vs. State of West Bengal and another, 2002(9) SCC

630. Even in the case of Rajathi (supra) relied upon by learned counsel for the respondent, the case of Krishnan (supra) has been referred to but

on merits, it has been held that the exercise of power under Section 482 Cr.P.C. was unwarranted.

9. Thus, the question is whether in the facts and circumstances of this case, it can be said that the filing of a complaint under Section 138 of the Act

amounts to abuse of the process of the Court and to prevent such abuse, the

power under Section 482 Cr.P.C. can be invoked? From the facts extracted hereinabove, it is apparent that on account of the failure of the complainant-respondent to obtain no objection from the other co-sharers and his inability to handover actual physical possession of the land agreed to be sold by him, the agreement stood frustrated. The averment in this regard made in the quashing petition has not been specifically denied in the reply filed on behalf of the respondent-complainant. Under the circumstances, the filing of the complaint under Section 138 of the Act, cannot be said to be justified. In fact, the filing of the complaint appears to be motivated by dishonest intention and is thus, abuse of the process of the Court. The inherent powers under Section 482 Cr.P.C. can be invoked in such a situation and the submission regarding maintainability of the petition is rejected.

10. Learned senior counsel for the petitioner further argues that in view of the aforementioned fact circumstances, the petitioner-accused No.1 did not have any liability in law to make payment to the complainant-respondent and she was justified in issuing "stop payment" instructions to the bank.

The learned revisional Court has fallen in error in concluding that only a trial could lead to a finding regarding the agreement to sell having been

frustrated especially when the complainant- respondent himself admits that the father-in-law of the petitioner-accused No.1 had purchased another

plot of land immediately thereafter because a factory had to be set up. Reliance has been placed upon the judgments in "M/s Laxmi Dyechem Vs.

State of Gujarat and others 2013(1) RCR (Criminal) 260" and "M/s Indus Airways Pvt. Ltd. and others Vs. M/s Magnum Aviation Pvt. Ltd and

another 2014 (2) RCR (Criminal) 494". Learned counsel for the respondent, however, supports the decision of the Courts below and places

reliance upon judgments of the Supreme Court in "HMT Watches Ltd. Vs. M.A Abida and another, 2015(2) RCR (Criminal) 366", "Ravindra

Kumar Madhanlal Goenka and another Vs. M/s Rugmini Ram Raghav Spinners Pvt. Ltd. 2009 (3) RCR (Criminal) 338", a single Bench judgment

of this Court in "Nilesh Shah Vs. Jyoti Rani and others, 2014(7) RCR (Criminal) 2363" and a single Bench judgment of the Delhi High Court in

"Aman Kumar Harjal Vs. State and another, 2015(9) RCR (Criminal) 946."

11. In the case of M/s Laxmi Dyechem (supra), it has been held as under:-

"28. Thus, dishonour of cheques simpliciter for the reasons stated in Section

138 of the NI Act although is sufficient for commission of offence

since the presumption of law on this point is no longer *res integra*, the category of ‘‘stop payment’’ instruction to the bank where the account

holder has sufficient funds in his account to discharge the debt for which the cheque was issued, the said category of cases would be subject to

rebuttal as this question being rebuttable, the accused can show that the stop payment instructions were not issued because of insufficiency or paucity

of funds, but stop payment instruction had been issued to the bank for other valid causes including the reason that there was no existing debt or liability

in view of bonafide dispute between the drawer and drawee of the cheque. If that be so, then offence under Section 138 although would be made out,

the same will attract Section 139 leaving the burden of proof of rebuttal by the drawer of the cheque. Thus, in cases arising out of ‘‘stop

payment’’ situation, Sections 138 and 139 will have to be given a harmonious construction as in that event Section 139 would be rendered

nugatory.’’

12. In the case of *M/s Indus Airways Pvt. Ltd.* (supra), it has been held that for a criminal liability to be made out under Section 138 of the Act, a

legally enforceable debt or liability should be subsisting. If a cheque has been issued towards an advance payment at the time of signing of a contract

and the contract is subsequently cancelled, it cannot be said that there was a subsisting liability and consequent dishonor of cheque is not actionable

under Section 138 of the Act.

13. The case of *M/s Laxmi Dychem* (supra) is not attracted in the facts of this case because the said judgment gives a right to the drawer of a

cheque to rebut the presumption under Section 138 of the Act in case an instruction has been issued to ‘‘stop payment’’ despite sufficiency of

funds. However, the judgment in *M/s Indus Airways Pvt. Ltd.* (supra), supports the case of the petitioner because in the instant case also, the

agreement has come to an end. This is apparent from the reply to the statutory notice under Section 138 of the Act as well as the admitted fact that

immediately thereafter, the father-in-law of the petitioner purchased another plot of land for setting up his factory. Thus, the Courts below fell in error

in concluding that the issue could be determined only after a trial. The stand of the petitioner-accused No.1 is clear and unambiguous in this regard and

the complainant-respondent has not given any satisfactory reply thereto, except to state that he was always ready and willing to execute the sale deed.

14. The case of HMT Watches Ltd. (supra) is distinguishable on facts. The issue involved in the said case was whether the cheques issued by the

accused therein were "security" cheques. The case of Ravindra Kumar Madhanlal Goenka (supra) is also distinguishable as the issue in the said

case was regarding quashing of an FIR under Section 420 and 406 IPC. Similarly, the judgments in Nilesch Shah (supra) and Aman Kumar Harjal

(supra) are also not applicable because issue involved therein was whether the accused was incharge of and responsible for the affairs of the

company, which is not the issue in the present case.

15. For the reasons aforementioned, the petition is allowed; order dated 06.08.2016 (Annexure P-8), passed by the learned Addl. District and Sessions

Judge, Ludhiana, order dated 20.10.2015 (Annexure P6) as well as summoning order dated 21.02.2011 (Annexure P2) passed by the JMIC, Ludhiana,

alongwith complaint case No.949/2 dated 21.2.2011, are quashed. Consequently, notice of accusation dated 26.11.2015 (Annexure P-9), is also

quashed.