
(2006) 02 AHC CK 0062

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 10413 of 2005

Gaurav Dewan and Dharmendra Chaudhary

APPELLANT

Vs

State of Uttar Pradesh, Senior Superintendent of Police,
Station House Officer and Shri Nirendra Kumar, Secretary,
Ganna Samiti Ltd.

RESPONDENT

Date of Decision : 27-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471, 479

Citation : (2006) 4 BC 475

Hon'ble Judges : Shiv Shanker, J; Amitava Lala, J

Bench : Division Bench

Advocate : Vivek Chaudhary, for the Appellant; U.N. Shukla and A.G.A., for the Respondent

Judgement

Amitava Lala, J.—In the present case, the petitioners wanted to get an order of quashing the F.I.R. dated 29th September, 2005 lodged as Case Crime No. 853 of 2005, under Sections 420, 467, 468 & 471 I.P.C., Police Station Kanth, District Moradabad and further incidental prayers as well as interim order not to arrest the petitioners during pendency of the writ petition. It is well known that Section 420 I.P.C. is made for cheating and dishonestly inducing delivery of property. Such offence is cognizable, non-bailable, compoundable with permission of the Court before which any prosecution of such offence is pending, and triable by Magistrate of First Class. Sections 467, 468 and 471 I.P.C. are really applicable in the case of forgery.

2. The case of the complainant being respondent No. 4, the Secretary of Ganna Samiti Ltd., Kanth, in the first information report is that upon purchasing sugarcane through samiti by the petitioner company, the petitioners, being Managing Director and Occupier of the Company, handed over a cheque

amounting to Rs. 3,19,14,000/- for the respective payments. On presentation to the bank, it was returned due to insufficient fund. According to the complainant, the petitioner No. 1, being Managing Director, knowing fully well that there is insufficient amount in the bank handed over the cheque. Therefore, such action is violative of the aforesaid sections.

3. According to us, Section 138 of the Negotiable Instruments Act, 1881 is squarely applicable in such a situation. Section 138 speaks for dishonour of cheque for insufficiency, etc., of funds in the account. Such section is as follows:-

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the "cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(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.

Explanation.-For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.

4. Therefore, the aforesaid section under the Negotiable Instruments Act, 1881 Is a special Act when Section 420 of the Indian Penal Code is a general Act. It is well known that special prevails over the general. Therefore, in such situation, like the above, Section 138 of the Negotiable Instruments Act is desirably applicable. In any event, presently situation is different. The petitioners admittedly paid the amount of Rs. 3,19,14,000/-, which has been recorded under an order of the Division Bench dated 18th October, 2005.

5. Petitioners contended that they have not violated the order of the Court and

the cheque was given as a security in connection with the money to be paid pursuant to an order of the Court. The petitioners further contended that the first information report was made with a malafide intention. Submitting of a cheque in the bank in such situation is nothing but a pressure tactics upon the petitioners. No case has been formed under Sections 467, 468 and 479 I.P.C.

6. Two judgements were cited by the respective parties in respect of quashing of the first information report. The petitioners have cited a decision in connection with State of Haryana and others Vs. Ch. Bhajan Lal and others, to establish that in view of the aforesaid circumstances the first information report should be quashed.

7. According to us, the Supreme Court in such judgement specifically held that power of the High Court either under Article 226 of the Constitution of India or u/s 482 of the Code of Criminal Procedure should be exercised sparingly and that too in the rarest of rare cases. According to us, a first information report has been lodged and the proceeding was initiated. Whether the proceeding is rightly initiated or not, can not be germane in a situation where payment has already been made. Therefore, the petitioners have acted upon on the basis of the first information report, which is not only related to Section 420 I.P.C. alone but also under Sections 467, 468 and 479 I.P.C. It is to be remembered that in a judgement reported in 2004 SCC 353 (State of M.P. v. Awadh Kishore Gupta and Ors.) again the Supreme Court held that it is not proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It is erroneous to assess the material before it and conclude that the complaint can not be proceeded with. Although such order was passed in connection with an application u/s 482 of the Code of Criminal Procedure, but in the cases of quashing of the first information report much weightage can be given towards the proceedings of Section 482 Cr.P.C. than the Article 226 of the Constitution of India.

8. Therefore, having cumulative effect of both the judgements first information report can not be said to be quashed at this stage. However, in the interest of justice petitioners can be protected in the following manner.

9. The Investigating Officer of Case Crime No. 853 of 2005, under Sections 420, 467, 468 and 471 I.P.C, Police Station Kanth, District Moradabad will conclude the investigation within a period of three months from the date, on which a certified copy of this order is presented before him. The petitioners are directed to co-operate with the Investigating Officer in all possible manner. If the Investigating Officer or informant found himself aggrieved due to falsification, misstatement, fraud, non-cooperation with the Investigating Officer or any other reasons whatsoever relevant for the purpose, he is at liberty to apply for recalling/ variation/ vacating/ modification of the order. However, the petitioners will not be arrested in the above mentioned case crime number till the

submission of the charge-sheet/final report, if any.

10. Accordingly, the writ petition stands disposed of

11. However, no order is passed as to cost.