
(2012) 06 JH CK 0088

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 272 of 2002

Ghazi Mohammad Masud Alam and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-06-2012

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 142(b)
Penal Code, 1860 (IPC) — Section 34, 420, 465, 467, 468

Citation : (2012) 4 JCR 348

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Ananda Sen, for the Appellant; Srijit Choudhary, GA for the State, for the Respondent

Final Decision : Allowed

Judgement

H.C. Mishra, J.—Heard learned counsel for the petitioners and learned G.A. appearing on behalf of the State. No one has appeared on behalf of private respondent No. 4, who is the complainant, in spite of service of notice upon him, The petitioner has challenged the order dated 26.8.2002 passed by the learned Sessions Judge, Giridih, in Criminal Revision No. 63 of 2002, rejecting the revision application filed against the order dated 29.4.2002 passed by Shri Satya Prakash, learned Judicial Magistrate, 1st Class, Giridih, in Complaint Case No. 1428 of 2001/T.R. No. 1252 of 2002, whereby prima facie case was found against the petitioners for the offence under Sections 420/ 34 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act.

2. The facts of the case lie in a narrow compass. The complainant, Mahboob Alam, had filed the complaint alleging that the petitioners had taken a friendly loan of Rs. 85,000/- from the complainant. Pursuant thereto, the petitioners had given a cheque bearing No. 781290 for the said amount of Rs. 85,000/- to the complainant. The said cheque was deposited in the Bank, but the same was bounced on 19.1.2001 due to insufficient fund in the account of the petitioners.

It is alleged in the complaint petition that on 24.1.2001, the complainant informed the petitioners about the same, whereupon the petitioners had assured him to deposit the amount in the account, so that cheque may be honoured. Subsequently, the cheque was again presented in the Bank, but the same was again dishonoured on 19.3.2001. Thereafter, the complainant gave a legal notice through registered post to the petitioners on 26.3.2001, which was received by the petitioners on 30.3.2001, but the amount was not paid to the complainant. Subsequently, it is alleged that the complainant had demanded money from the petitioners on 27.11.2001, which was flatly refused by the petitioners. Thereafter, the complaint petition was filed before the Court of Chief Judicial Magistrate. Giridih on 28.11.2001 for the alleged offence under Sections 420, 465, 467, 468 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act.

3. It appears from the impugned order that the complainant's statement was recorded on solemn affirmation and three witnesses were also examined by the complainant in the enquiry stage, who had supported the case in the Court below, on the basis of which, the Court below by order dated 29.4.2002 found prima facie case against the petitioners for the offence u/s 420/ 34 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act and the processes were ordered to be issued against the petitioners. The petitioners challenged the said order in criminal revision before the learned Sessions Judge, Giridih, which was registered as Criminal Revision No. 63 of 2002, wherein the point was taken by the petitioners that the complaint petition was not maintainable having been filed beyond the statutory period of limitation. Learned Sessions Judge, however, by order dated 26.8.2002, dismissed the revision application holding that point of limitation was to be considered at the time of trial and not at this stage. The petitioners have challenged the orders passed by both the Courts below in the present writ petition.

4. Learned counsel for the petitioners has submitted that the impugned orders passed by the Courts below are absolutely illegal, inasmuch as the legal notice was given to the petitioners on 26.3.2001, which according to the complainant was served upon the petitioners on-30.3.2001. Learned counsel submitted that thereafter the complaint petition was filed on 28.11.2001, which was apparently much beyond the statutory period u/s 142(b) of the Negotiable Instruments Act and accordingly, the very cognizance of the offence under the Negotiable Instruments Act was bad. Learned counsel further submitted that so far as the offence u/s 420 of the Indian Penal Code is concerned, there is no allegation at all making out the offence u/s 420 of the Indian Penal Code in the entire complaint petition and accordingly, the impugned orders cannot be sustained in the eyes of law.

5. Learned counsel for the State, on the other hand, has submitted that there is no illegality in the impugned orders passed by the learned Courts below, inasmuch as, prima facie case has been found against the petitioners also for the

offence u/s 420, I.P.C. along with Section 138 of the N.I. Act. Learned counsel further submitted that this writ petition has been filed by the petitioners by way of a second revision application, which is not maintainable in the eyes of law.

6. After having heard learned counsels for both sides and upon going through the impugned order, I find that from the complaint petition, it is apparent that the legal notice was given to the petitioner on 26.3.2001, which according to the complainant was served upon the petitioners on 30.3.2001. Accordingly, the complaint petition ought to have been filed within 30 days after the expiry of 15 days upon receipt of the notice by the petitioners, failing which, cognizance was clearly barred u/s 142(b) of the Negotiable instruments Act. As such, the impugned orders passed by the Courts below are absolutely illegal and cannot be sustained in the eyes of law. It is apparent from the perusal of the complaint petition, that the grievance of the complainant was primarily the dishonour of the cheque and there is nothing in the complaint petition to show that any offence was made out u/s 420 of the Indian Penal Code. In that view of the matter, I am of the considered view that the impugned orders passed by the Courts below cannot be sustained in the eyes of law. Consequently, the impugned order dated 26.8.2002 passed by the learned Sessions Judge, Giridih, in Criminal Revision No. 63 of 2002. as also the order dated 29.4.2002 passed by Shri Satya Prakash, learned Judicial Magistrate 1st Class, Giridih, in Complaint Case No. 1428 of 2001 T.R. No. 1252 of 2002, including the entire proceedings against the petitioners in the said complaint case, are hereby, quashed. This writ petition is, accordingly, allowed.