

(2014) 10 RAJ CK 0113

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 1903/2007

Gopi Nath Trading Co.

APPELLANT

Vs

Vinod Kumar Gupta

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

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

Citation : (2014) 4 WLN 363

Hon'ble Judges : Nisha Gupta, J

Bench : Single Bench

Advocate : Manish Gupta, Advocate for the Appellant; Jagdish Nagar and Sandeep Kumar Meena, Advocate for the Respondent

Judgement

Nisha Gupta, J.—This petition u/s. 482 Cr.P.C. has been filed on behalf of the petitioner against the order dt. 26/09/2007 (Ann. 10) passed by the Court of learned District & Sessions Judge, Bharatpur in Revision Petition No. 157/2007 (M/s. Gopinath vs. Vinod Kumar) whereby, the said revision petition preferred against the order dt. 25/05/2007 (Ann. 9) passed by the Court of learned Additional Chief Judicial Magistrate No. 2, Bharatpur taking cognizance against the petitioners for offence u/s. 138 of the Negotiable Instrument Act has been dismissed. The contention of the counsel for the petitioners is that petitioners are facing trial for offence u/s. 138 of the Negotiable Instrument Act in which cognizance has been taken against them on 25/05/2007 without disclosing the facts to the Court below that earlier, as regards to the same cheque, a complaint was filed, which has been withdrawn by the complainant. The earlier complaint was filed for the same cheque on 10.08.2006 with the allegation that cheque has been presented to the bank on 27.06.2006, which was returned back with the endorsement of insufficient funds on 05.07.2006. A notice has been issued to the petitioners and, thereafter, cognizance has been taken against them on 17.10.2006 and complaint has been withdrawn on 12.12.2006. Thereafter, on the same allegation, this second complaint has been filed on 23.02.2007 on

which cognizance has been taken. Contention of the counsel for the petitioners is that for the same cheque, second complaint is barred and not maintainable.

2. Per contra, the contention of the counsel for the respondent is that earlier, notice has been issued to Shri S.N. Bhargava, who was the partner of M/s. Gopi Nath Trading Co. Later on, it has been disclosed that Shri S.N. Bhargava is not partner in the firm hence, notice has been issued to the present petitioners and in such situations, the proceedings are maintainable.

3. Heard learned counsel for the parties and perused the impugned-order as well as the order passed earlier.

4. The documents presented by the petitioners clearly speak that earlier for the same cheque, notice has been issued and after non-payment, complaint has been filed, which was withdrawn after due cognizance. Hence, on the same cause of action, this second complaint is barred in view of the law laid down by the Apex Court in *Sadanandan Bhadran Vs. Madhavan Sunil Kumar*, and *Prem Chand Vijay Kumar Vs. Yashpal Singh and Another*, . The Apex Court in *Prem Chand Vijay Kumar supra* has held in paras 12 and 14, as under:-

"12. As noted in *Sadanandan Bhadran*'s case (*supra*) once a notice u/Cl. (b) of Sec. 138 of the Act is "received" by the drawer of the cheque, the payee or holder of the cheque forfeits his right to again present the cheque as cause of action has accrued when there was failure to pay the amount within the prescribed period and the period of limitation starts to run which cannot be stopped on any account."

"14. Thus, it is well settled that if dishonour of a cheque has once snowballed into a cause of action it is not permissible for a payee to create another cause of action with the same cheque".

In the light of above, this second complaint on the another created cause of action on the same cheque is barred and is liable to be quashed.

In view of the above, this petition u/s. 482 Cr.P.C. succeed and is allowed. The impugned-order dt. 25/05/2007 (Ann. 9) passed by the Court of Additional Chief Judicial Magistrate No. 2, Bharatpur taking cognizance against the petitioners for offence u/s. 138 of the Negotiable Instrument Act and the subsequent impugned-order dt. 26/09/2007 (Ann. 10) passed by the Court of learned District & Sessions Judge, Bharatpur rejecting Revision Petition No. 157/2007 (M/s. Gopinath vs. Vinod Kumar) challenging the same, are quashed.