
(1991) 09 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 3703-M of 1990

Harbhajan Singh Kalra

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 06-09-1991

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (1992) CivCC 506 : (1993) 76 CompCas 371 : (1992) 101 PLR 599 :
(1992) 1 RCR(Criminal) 169

Hon'ble Judges : J.S. Sekhon, J

Bench : Single Bench

Advocate : I.K. Mehta and M.S. Kohli, for the Appellant; Sunil Gour and A.P. Bhandari, for the Respondent

Judgement

J.S. Sekhon, J.—Criminal Miscellaneous Nos. 3703-M of 1990, 3792-M of 1990 and 3794-M of 1990 shall be disposed of by this order as these petitions involve the same legal controversy and between the same parties. Harbhajan Singh, petitioner, happens to be the director of the company, Messrs. Orion Auto and Steel Industries (Pvt.) Limited, Industrial Area, Banmore, District Morena (MP). This company has also its office at Gwalior. Shri T.P.S. Kalra is another director of this company. The petitioner-company had business dealings with Messrs. Star Wire India Ltd. In Criminal Miscellaneous No. 3703-M, the complainant-company had supplied some goods and Shri T.P.S. Kalra, director of the accused company, issued a cheque for Rs. 1,27,648.26 on May 15, 1989. The complainant company handed over this cheque to its banker, the Bank of Maharashtra, Faridabad, for collecting the amount. The bank sent this cheque to the Central Bank of India but it was returned with the remarks "refer to drawer". The complainant-company received intimation on August 2, 1989, of the dishonouring of the cheque by the banker. Thereafter, it gave notice on August 9, 1989, to the accused company, i.e., Messrs. Orion Auto and Steels Ltd., intimating the fact of dishonouring of the cheque and calling upon it to arrange for payment of this amount. On the failure of the accused to make payment of this amount, the

complainant-company filed complaint on August 29, 1989, for the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as " the Act "), against Harbhajan Singh, petitioner, and T.P.S., Kalra, in their capacity of directors of that company. The trial court, after recording preliminary evidence, summoned the petitioner as well as his co-accused, Shri T.P.S. Kalra, to face trial for an offence punishable u/s 138 of the Act.

2. In Criminal Miscellaneous No. 3792-M of 1990, the facts are almost the same except that the cheque which was dishonoured was issued by Shri T.P.S. Kalra on May 29, 1989, for Rs. 1,38,830.35. This cheque also was dishonoured on June 14, 1989, with the remarks " refer to drawer ".

3. In Criminal Miscellaneous No. 3794-M of 1990, the facts are almost the same as the petitioner had accepted that the dishonoured cheque was issued on June 14, 1989, for Rs. 2,19,335.20. This cheque also was dishonoured on July 6, 1989, with the remarks " it exceeds arrangement ".

4. Harbhajan Singh, the petitioner, seeks the quashing of the complaint and other proceedings resulting therefrom, inter alia, on the ground that he was not in charge of the business of the company and that his prosecution is bad due to non-issue of notice required u/s 138 of the Act. The provisions of this section read as under :

" 138. Dishonour of cheques for insufficiency, etc., of funds in the account-- 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 extend to one year, 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 fifteen 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 purposes of this section, " debt or other liability " means a legally enforceable debt or other liability."

5. A bare glance through the same leaves no doubt that the following ingredients should be fulfilled :

" (i) that the cheque should be drawn by a person on an account maintained by him for discharging the already existing debt or liability.

(ii) the cheque should be dishonoured by the bank on the ground of lack of sufficient funds or on the ground that it exceeds the amount arranged to be paid from that account by an agreement made with that bank.

(iii) that the cheque is presented within six months from the date of its issue or within the period of its validity.

(iv) the payee or holder in due course of the cheque makes a demand for the payment of the said amount or money by giving notice in writing to the drawer of the cheque within 15 days of the receipt of information from the bank regarding its dishonour.

(v) the drawer of the cheque fails to make the payment to the payee or the holder of the cheque within 15 days of the receipt of the said notice."

6. Thus, in the present case, admittedly, no notice was issued to Harbhajan Singh, the petitioner, calling upon him to pay the amount of the dishonoured cheque although it was an essential ingredient of the offence punishable u/s 138 of the Act. A notice was issued simply in the name of the accused company, Messrs. Orion Auto and Steel Industries (Pvt.) Limited, which was not arrayed as accused in the complaint. Thus, by no stretch of imagination, can it be said that the notice pinning down criminal liability on the company would be deemed to be a notice to the directors, i.e., the accused. Issuing of notice to the directors of the company was required as the director may have, in order to avoid their/his criminal prosecution, made payment of the dishonoured cheque from a private source.

7. The matter does not rest here as all these three cheques were not issued by Harbhajan Singh, the petitioner, but by Shri T.P.S. Kalra, another director of that company. Apparently, it cannot be said that the petitioner was in charge of the conduct of the business of the company. Learned counsel for the complainant/respondent tried to contend that the case of the petitioner falls u/s 141(2) of the Act and Section 141 of the Act, which relates to offences committed by a company, reads as under :

" 141. (1) If the person committing an offence u/s 138 is a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be

liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. -- For the purposes of this section : --

(a) " company " means any body corporate and includes a firm or other association of individuals ; and

(b) " director", in relation to the firm, means a partner in the firm.

8. A bare glance through the provisions of Section 141(2) of the Act leaves no doubt that the complainant had to allege in the complaint against the company that the offence has been committed by its directors, managers, etc., with their consent or connivance or neglect on their part. In all these three complaints, the complainant had not even raised a little finger against Harbhajan Singh, the accused. Thus, even if the entire allegations of the complainant contained in the complaint are to be taken to be true, no case is made out u/s 138 of the Act.

9. For the reasons recorded above, there is no option but to quash the complaint as well as the impugned order of summoning Shri Harbhajan Singh, the petitioner, in order to prevent abuse of the process of the criminal court. I order accordingly by accepting these three petitions. The trial court files be sent back forthwith for continuation of proceedings against the remaining accused. The complainant/respondent No, 2 is directed through his counsel, Mr. Bhandari, to appear in the trial court on September 30, 1991.