
(2006) 05 AHC CK 0089

In the Allahabad High Court

Case No : Criminal Misc. Application No. 11313 of 2005

Jai Durga Enterprises

APPELLANT

Vs

State of U.P. and Indo Automobiles

RESPONDENT

Date of Decision : 17-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482

General Clauses Act, 1897 — Section 27

Negotiable Instruments Act, 1881 (NI) — Section 138, 87

Citation : (2007) 1 BC 184 : (2007) 2 CivCC 98 : (2006) CriLJ 3312 : (2006) 4 RCR(Criminal) 420

Hon'ble Judges : Shiv Shanker, J

Bench : Single Bench

Advocate : I.P. Singh and George Stephen, for the Appellant; Devendra Saini and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Shiv Shanker, J.—Application u/s 482 Cr.P.C. has been filed by M/s Jai Durga Enterprises and Dharmendra Singh, applicants against respondent No. 2, M/s Indo Automobiles praying to quash the order dated 24.2.2005 passed in criminal case No. 1113/ 2005, M/s Indo Auto Mobiles v. Jai Durga Enterprises, u/s 138 of Negotiable Instrument Act, P.S. Kotwali Nagar, District Saharanpur passed by Judicial Magistrate 1st, Saharanpur whereby the applicants/accused were summoned for trial.

2. Brief facts arising out of this application are that opposite party No. 2, M/s Indo Automobiles filed criminal complaint against the above applicants/accused, wherein it was stated that he was manufacturer of tractors under the name of Indo Firm Equipment Limited and supplying tractors to its customers and under the transaction of said tractor the applicants were liable to pay Rs. 13,22,000/- to which the applicants have given a cheque of Rs. 13,22,000/- dated 29.4.04 to opposite party No. 2/complainant, which was presented by him in his banker and

the same was dishonoured by the bank. After the dishonour of the cheque, opposite party No. 2 gave a notice on 18.5.2004 to the applicants, which was not received by the applicants, then, the complainant was filed by opposite party No. 2 against the applicants. Thereafter, statement of complainant was recorded by the court below u/s 200 Cr.P.C. Then, he was summoned for the trial for the offence u/s 138 Negotiable Instrument Act.

3. Feeling aggrieved by it, the applicants/accused filed an objection against the summoning order, which was rejected by the court below vide order dated 2.4.2005. Thereafter, this application has been filed in this Court.

4. Heard the argument of learned Counsels for both the parties and perused the record.

5. It is contended on behalf of the applicants that they did not receive any notice from opposite party No. 2 as provided u/s 138 Negotiable Instrument Act. It is further contended that the applicants have been given only signed and dated blank cheque to opposite party No. 2 and entry made on the said cheque was done, which was made by opposite party No. 2 himself. It cannot be said that the applicants have given any consent to opposite party No. 2. The said cheque was in possession of opposite party No. 2 for collateral security. The said transaction had not only attracted the provision of Section 138 Negotiable Instrument Act but also covered by Section 87 of the Act. The said undated cheque was given by the applicants to respondent No. 2 as security. Therefore, the complaint filed on behalf of opposite party No. 2 was not maintainable and court below has committed illegality in passing the summoning order as no prima facie case was made out against the applicants.

6. On the other hand, it is submitted that there is no illegality in passing the impugned order by the court below. Therefore, this application is liable to be dismissed.

7. So far as the first ground regarding service of notice is concerned, it has been specifically mentioned in the complaint by opposite party No. 2 that one notice under registered post and one notice under U.P.C. were sent by opposite party No. 2/complainant to the accused/applicants on 18.5.2004. Notice under registered post had been returned by the postman by endorsing false report while the notice sent under U.P.C. was received by him.

8. Therefore, it appears that the notice sent by registered post was not served upon the applicants/accused. It is the admitted case of the complainant/respondent No. 2. So far as the notice sent under U.P.C. may be treated as legal notice for the purpose of service.

9. In this regard, it is essential Section 27 of The General Clauses Act, 1897 be produced, which runs as under:

"Meaning of service by post.- Where any (Central Act) or Regulation made after the commencement of this Act authorizes or requires any document to be served

by post, whether the expression "service" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

10. Therefore, it is essential that service upon registered notice should be effected in absence of registered post. It shall not be presumed that there is sufficient service regarding notice sent by U.P.C". and it cannot be taken into account u/s 27 of the Act that there was sufficient service upon the accused/applicants. Although, it has been denied by the applicant that no any notice was received by them in the affidavit and same has not been controverted by filing counter affidavit. Therefore, it is liable to be deemed that there was no sufficient service of legal notice upon the applicants/accused. On this basis, the impugned order passed by the court below is liable to be quashed.

11. So far as the second contention of the applicants is concerned, this has no force. It can be looked at the stage of trial whether the said cheque was given in blank or in security. It has been held in Harbhajan Singh and Others Vs. State of U.P. and Another, Allahabad High Court that

Plea taken that cheque was only issued as security-Held, while exercising powers u/s 482 Cr.P.C., only on basis of pleadings of parties, it cannot be held that blank cheque was given as security-Whether cheque was issued under guarantee or with understanding with parties that as soon as cheque would be presented in bank, same would be encashed-Has to be examined by trial Court after evidence of parties.

12. Learned Counsel for the applicants cited pronouncements in support of his contention

(1) Sri Taher N. Khambati v. Vinayak Enterprises, Secunderabad and Ors. 1995 CrL.J. 560 (Andhra Pradesh High Court).

(2) Balaji Seafoods Exports (India) Ltd. and Anr. v. Mac Industries Ltd. (1) 2000 Bank CLR 564 (Madras High Court)

(3) Avon Organics Ltd. v. Pioneer Products Ltd. and Ors. 2004(1) Crimes 567 (Andhra Pradesh High Court).

13. The above pronouncements cited on behalf of the applicants are related to the other High Courts while the above pronouncement Harbhajan Singh's case (Supra) is related to this Court, which is latest. Therefore, in absence of sufficient service upon the registered notice, prima facie case was not made out for the offence u/s 138 Negotiable Instrument Act. In these circumstances, court below committed illegality in passing the impugned order.

14. Thus, the application is allowed and impugned order is, hereby, set aside and

proceedings pending before the court below is hereby quashed.