
(2009) 03 SHI CK 0041
In the High Court Of Himachal Pradesh

Jaram Singh

APPELLANT

Vs

Joginder Singh Parmar

RESPONDENT

Date of Decision : 12-03-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2009) 1 ShimLC 513

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldeep Singh, J.—The complainant has come in appeal against the Judgment dated 18.10.2001, passed by the learned Additional Chief Judicial Magistrate, Nurpur, District Kangra, Himachal Pradesh, dismissing Criminal Complaint No. 213-III/98.

2. The brief facts of the case are that the appellant sold Khair trees to respondent for a consideration of Rs. 68,200/-. The respondent had paid Rs. 6,000/- in advance as earnest money on 31.12.1997. The respondent for the balance amount issued a cheque of Rs. 62,200/- drawn on State Bank of Patiala, Nurpur. The appellant on 03.01.1998, personally presented the cheque in the said Bank but the cheque was returned with the objection payment stopped" by the drawer and "insufficient funds" in the account of the respondent. On 13.01.1998 the appellant served registered notice to respondent calling him to make the payment within 15 days from the date of notice, it was not delivered to respondent as he was out of station and notice was returned undelivered to the appellant on 20.01.1998. On 22.01.1998, the respondent personally approached Shri R.S. Verma, Advocate for the appellant and on his request a carbon copy of notice dated 13.01.1998 was supplied to the respondent and his signature was obtained. The respondent did not make the payment. The appellant filed the complaint on 02.02.1998.

3. The learned Additional Chief Judicial Magistrate after recording preliminary evidence vide order dated 18.06.1998 summoned the respondent u/s 138 of the Negotiable Instruments Act, 1881. The notice of accusation was put to respondent on 12.11.1998. The appellant led his evidence and the respondent was examined u/s 313 Cr. P.C. The learned Additional Chief Judicial Magistrate framed the following two points for determination:

(1) Whether the present complaint is pre-mature and no cognizance can be taken on the same, as alleged?

(2) Whether the complainant has proved beyond all reasonable doubt that on 31.12.1997, the accused issued a cheque worth Rs. 62,200/- in favour of the complainant, which was dishonoured, as alleged?

The point No. 1 was answered in affirmative and point No. 2 was left undecided and the complaint was dismissed on the ground that the Court could not have taken cognizance on the complaint being premature.

4. I have heard Ms. Devyani Sharma, learned Counsel for the appellant and Mr. R.K. Sharma, learned Counsel for the respondent and have gone through the record. Ms. Devyani Sharma has submitted that learned Additional Chief Judicial Magistrate has erred in dismissing the complaint and in support of her submissions she has relied upon the Judgment of Apex Court in Narsingh Das Tapadia Vs. Goverdhan Das Partani and Another, Mr. R.K. Sharma, learned Counsel for the respondent has supported the impugned judgment and has prayed for dismissal of the appeal.

5. The learned Counsel for the appellant has submitted that no period is prescribed before which the complaint can be filed from the date of the cause of action arising under proviso (c) to Section 138, the Court may not take cognizance till the time cause of action arises to the complainant. She has submitted that the complaint was filed on 02.02.1998 and process was issued by the learned Magistrate on 18.06.1998.

6. In "Narsingh Das Tapadia, supra, it has been held in para 8 as follows:

Taking cognizance of an offence" by the court has to be distinguished from the filing of the complaint by the complainant. Taking cognizance would mean the action taken by the court for initiating judicial proceedings against the offender in respect of the offence regarding which the complaint is filed. Before it can be said that any Magistrate or court has taken cognizance of an offence it must be shown that he has applied his mind to the facts for the purpose of proceeding further in the matter at the instance of the complainant.

The Supreme Court has further held that mere presentation of the complaint in the court cannot be held to mean that its cognizance had been taken by the Magistrate. If the complaint is found to be premature, it can await maturity or be returned to the complainant for filing later and its mere presentation at an earlier date need not necessarily render the complaint liable to be dismissed or confer

any right upon the accused to absolve himself from the criminal liability for the offence committed. In the present case, the learned Magistrate did not return the complaint, rather he entertained the complaint and on 18.06.1998 the process was issued on which date the complaint was not pre-mature. In view of Narsingh Das Tapadia, supra, impugned judgment is not sustainable. The learned Magistrate has not decided the complaint on merits. In these circumstances, the judgment dated 18.10.2001, passed by learned Additional Chief Judicial Magistrate, Nurpur, District Kangra, H.P. in Criminal Complaint No. 213-III/98 is set aside. The case is remanded to the learned Additional Chief Judicial Magistrate, Nurpur, District Kangra, H.P. to decide the complaint in accordance with law. The parties through their counsel are directed to appear before the learned Court below on 07.04.2009. The Registry is directed to send the record of the learned Court below immediately so as to reach before the date fixed.