
(1997) 07 P&H CK 0180
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 348 of 1996

Kamboj Gram Udyog Samiti

APPELLANT

Vs

Dhillon Bricks Works

RESPONDENT

Date of Decision : 15-07-1997

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1998) 2 CivCC 14

Hon'ble Judges : S.C. Malte, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Malte, J.—The complainant filed this revision against the order by which its complaint, filed u/s 138 of the Negotiable Instruments Act, came to be dismissed and accused were discharged by the Sub Divisional Judicial Magistrate, Malerkotla, by an order dated 15.5.1996.

2. The petitioner filed the complaint on the following allegations;

On 11.9.1995 the accused issued in favour of the complainant a cheque for Rs. 3,50,000/- drawn on State Bank of Patiala, Branch Narangwal (Ludhiana). The complainant deposited that cheque with Oriental Bank of Commerce, Branch Malerkotla for realisation. The sequence of events indicate that the Oriental Bank of Commerce in turn presented that cheque to the State Bank of Patiala, Branch Narangwal (Ludhiana). The State Bank of Patiala returned that cheque with endorsement that cheque could not be honored because the funds were insufficient. The papers indicate that State Bank of Patiala has sent such intimation to Oriental Bank of Commerce, Malerkotla from whom that cheque had been received by State Bank of Patiala for realisation. It further appears from papers that the Oriental Bank of Commerce, Malerkotla vide its letter dated 11.10.1995 informed the complainant that the cheque has been dishonored for want of sufficient funds in the account. The complainant then sent a notice dated

18.10.1995 to the accused and called upon them to discharge their liability under the cheque. Since the accused did not pay any heed to that notice, the complainant filed a complaint on 2.12.1995, u/s 138 of the Negotiable Instruments Act. The Sub Divisional Judicial Magistrate, Malerkotla issued process against the accused.

3. The accused appeared and sought the dismissal of the complaint and their discharge on two grounds, viz (i) that the cheque had not been issued against the existing liability at the time of its issuance, and (ii) that the complainant had not complied with the time limit of issuance of notice within fifteen days since he received the intimation regarding the dishonour of the cheque. The trial Court held that the complainant has not spelt out a case that he fulfilled the requirement of Clause (b) of Section 138 of the Negotiable Instruments At, which provides that the holder of the cheque should serve a notice within fifteen days of the receipt of the information regarding the dishonour of the cheque and call upon the drawer of the cheque to fulfill the obligation of payment. He was of the view that the complainant has not led satisfactory evidence to show on which date he received the intimation from the bank that the cheque had been dishonored.

4. The respondents-accused filed written statement in this revision and raised points similar to the points raised by them in the trial Court.

5. In so far as it pertains to the question whether the cheque was issued in discharge of any debt or other liability, that would be a matter of evidence. In the context of that the complainant would be equipped with a presumption u/s 139 of the Negotiable Instruments Act which provided that it shall be presumed, unless contrary is proved that the holder of the cheque received the cheque for discharging debt or other liability. Further, the defence of the accused in such cases is regulated by Section 140 of the Negotiable Instruments Act. Since the Magistrate was dealing with the complaint at the initial stage soon after the issuance of summon to the accused to appear before him, he should have afforded opportunity to the complainant to lead the evidence in that respect.

6. As such it clearly appears that the learned Magistrate totally ignored the procedure to be followed in respect of trial of summon cases, as provided in Chapter XX of the Criminal Procedure code. The accused were called upon to appear before the Court by issuance of process u/s 204 and it was incumbent on the Magistrate to afford sufficient opportunity to the complainant as per Section 254 to lead evidence in respect of such matters the adjudication of which would depend on the factual position. Section 254 Cr.P.C. provides that the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. It further provides that the Magistrate shall also hear the accused and take all such evidence as would be produced in defence. In other words, in those cases where the question is required to be determined on the proof of certain facts, any pre-mature or hasty decision in respect of such aspects is not warranted. In this case the matter rested on the

question of limitation on adjudication of the factual position as to when the complainant received the intimation regarding the dishonour of the cheque. The complaint indicates that the cheque had been drawn on one bank, and had been deposited in another bank for realisation. The papers further indicate that the bank on which the cheque was drawn sent intimation regarding the dishonour of the cheque to the bank from which it had received that cheque for realisation. The Magistrate had made an observation that the counsel for the complainant produced a letter from the bank which bears the date 11.10.1995, which shows that the bank informed the complainant that the cheque has been dishonored. He has further observed that the complainant has not taken any step for proving that the said letter was thus dispatched from that bank on a particular date. In my opinion, that was not correct observation in view of the fact, as the material before me indicates that the complainant was yet to lead evidence as per Section 254 of the Criminal Procedure Code.

7. In view of my observation above, the order passed by the learned Magistrate deserves to be set aside. Revision allowed. The order passed by the Magistrate on 15.5.1996 is hereby set aside. The matter is sent back to the Magistrate with a direction that he shall afford opportunity to the complainant to lead evidence as per Section 254 Cr.P.C. Thereafter he shall also afford opportunity to accused to lead evidence in defence if accused wish to lead such evidence. Ordered accordingly.