
(2014) 09 CHH CK 0034
In the Chhattisgarh High Court
Case No : Criminal Revision No. 513/2009

Kaushal Kumar

APPELLANT

Vs

Chandrabhasini Road Carrier and Others

RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 397, 401, 482 — Negotiable Instruments Act, 1881 - Section 138, 142

Citation : (2015) 2 MPHT 23

Hon'ble Judges : Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Ankit Singhal, Advocate, for the Appellant

Judgement

Sanjay K. Agrawal, J.?The complainant-Kaushal Kumar filed a criminal complaint for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called as "NI Act") against the non-applicants herein before the Chief Judicial Magistrate, Raigarh. The Chief Judicial Magistrate, Raigarh, after hearing the complainant and having found prima facie case under Section 138 of NI Act, issued summons to the non-applicants for their appearance before the said Court.

2. The non-applicants herein without appearing before the Chief Judicial Magistrate, Raigarh, straightway filed a criminal revision challenging order taking cognizance of offence and summoning them before the Court of Session, on 25-9-2008 contending inter alia that the order taking cognizance dated 21-1-2008 is unsustainable and bad in law.

3. Learned Additional Sessions Judge, by order impugned dated 15-7-2009 set aside the order of Chief Judicial Magistrate, Raigarh, taking cognizance, and allowed the revision finding inter alia :--

"--That, cheque in question is self-drawn cheque and the name of complainant has not been mentioned.

--That, cheque in question in original, has not been produced alongwith the criminal complaint and no sufficient ground is available for taking cognizance of offence under Section 138 of the NI Act."

4. Questioning this order of setting aside taking cognizance, the complainant has filed this revision under Section 397 read with Section 401, Cr.P.C.

5. Shri Ankit Singhal, learned Counsel appearing for the applicant would submit that learned Sessions Judge has committed manifest error in interfering with the order taking cognizance and summoning the non-applicants as the complaint instituted by the applicant prima facie discloses commission of offence under Section 138 of the NI Act. He would further submit that scope of interference in the order taking cognizance is extremely limited, and as such, the order impugned passed by the Court of Session deserves to be set aside.

6. Despite service of notice, no one has entered into appearance on behalf of the non-applicants.

7. I have heard the learned Counsel appearing for the applicant and perused the order impugned including records of the case carefully.

8. The complainant has filed criminal complaint for commission of offence under Section 138 of the NI Act stating inter alia, that self-drawn cheque issued by non-applicant No. 2/Vinod Kumar Agrawal on 31-5-2007 towards liability of Rs. 7,50,000/- was dishonoured by the Punjab National Bank on 28-1-2007 and thereafter legal notice was served to the non-applicants on 29-11-2007, which was received by them on 7-12-2007 and within a period of 15 days from the date of receiving notice, complaint was filed on 21-1-2008. The Chief Judicial Magistrate, Raigarh, finding that ingredients of offence under Section 138 of the NI Act are available to take cognizance of the matter, issued summons to the non-applicants. The non-applicants, it appears that, did not appear before the said Court and directly filed a criminal revision questioning the said order.

9. The question to be considered is whether the Revisional Court is justified in interfering with the order taking cognizance and summoning the non-applicants under Section 190, Cr.P.C. read with Section 142 of the NI Act.

10. The order passed by the Chief Judicial Magistrate clearly indicates application of mind summoning the non-applicants herein and prima facie discloses commission of offence punishable under Section 138 of the NI Act.

11. Learned Additional Sessions Judge, interfered with the order taking cognizance merely on the ground that the original cheque in question was not produced along with complaint and the cheque drawn is the self-drawn cheque and no document relating to dishonour of cheque on the basis of stop payment has been filed.

12. Admittedly, the complainant has filed a photocopy of cheque in question and the original cheque can be produced during the course of trial and the question

whether the self-drawn cheque attracts the penal provision of Section 138 of NI Act is the defence of the non-applicants, which can be examined by the Trial Magistrate during the course of trial, likewise other documents relating to stop payment can also be produced during the course of trial and non-production of above-stated documents at the initial stage cannot be a ground to interfere with the order taking cognizance.

13. In a decision reported in B. Jagdish and Another Vs. State of A.P. and Another, , Their Lordships of Supreme Court has clearly said that jurisdiction of the Court to interfere with the order summoning accused is extremely limited, and observed as under:--

"24. The question is as to whether the High Court should have interfered with the order summoning the appellant at this stage ? It is now a well-settled principle of law that at the stage of quashing of an order taking cognizance, an accused cannot be permitted to use the material, which would be available to him only as his defence. In his defence, the Court would be left to consider and weigh materials brought on record by the parties for the purpose of marshalling and appreciating the evidence. The jurisdiction of the Courts, at this stage, is limited as whether a case of reckless/gross negligence has been made out or not will depend upon the facts of each case."

14. Thereafter, in case of Dr. Mrs. Nupur Talwar Vs. C.B.I., Delhi and Another, , the Supreme Court has clearly held that, order taking cognizance is to be interfered with when order is perverse or based on no material by observing as under :--

"23. The correctness of the order whereby cognizance of the offence has been taken by the Magistrate, unless it is perverse or passed on no material, should be sparingly interfered with. In the instant case, anyone reading the order of the Magistrate taking cognizance, will come to the conclusion that there has been due application of mind by the Magistrate and it is a well-reasoned order. The order of the High Court passed on a criminal revision under Sections 397 and 401 of the Code (not under Section 482) at the instance of Dr. Mrs. Nupur Talwar would also show that there has been a proper application of mind and a detailed speaking order has been passed.

25. We feel constrained to observe that at this stage, this Court should exercise utmost restraint and caution before interfering with an order of taking cognizance by the Magistrate, otherwise the holding of a trial will be stalled. The Superior Courts should maintain this restraint to uphold the rule of law and sustain the faith of the common man in the administration of justice."

15. Very recently in case of Bhaskar Lal Sharma and Another Vs. Monica and Others, , the Supreme Court has held that the averments made in a complaint petition will have to be established during the course of trial by stating as under:--

"11. The facts, as alleged, therefore, will have to be proved, which can only be done in the course of a regular trial. It is wholly unnecessary for us to embark upon a discourse as regards the scope and ambit of the Court's power to quash a criminal proceeding. The appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence."

16. Thus, guided by the law laid down by Their Lordships the Supreme Court in the cases referred hereinabove coupled with the fact that original documents as well as supportive documents can be filed during the cause of trial, and it cannot be held that Court of Session is justified in interfering with the order taking cognizance and summoning the accused/non-applicants at the initial stage of cognizance.

17. Resultantly, the revision is allowed in part. The order impugned passed by the Sessions Judge deserves to be and is hereby set aside. Criminal Complaint No. 67/08, Kaushal Kumar v. Chandrahasini Road Carrier is hereby restored to its original number in the Court of Chief Judicial Magistrate, Raigarh, for hearing and disposal in accordance with law. The non-applicants/accused are at liberty to raise and establish their defence during the course of trial in accordance with law. Records of Trial Magistrate be sent back forthwith.