
(2010) 02 JH CK 0047
In the Jharkhand High Court

Kaushik Aditya and Another

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 24-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 3 BC 602 : (2010) CriLJ 4013 : (2010) 4 Crimes 157 : (2011) 4 RCR(Criminal) 781

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—Though this writ application was filed on behalf of the petitioner No. 1 Kaushik Aditya and petitioner No. 2 Paramita Aditya for quashing the entire criminal proceeding including the order dated 7.10.2009 passed by Sri Uttam Anand, Judicial Magistrate 1st Class, Jamshedpur in Complaint case No. 3393 of 2009 whereby and whereunder the learned Judicial Magistrate took cognizance of the offence u/s 138 of the Negotiable Instrument Act against the petitioners but at the time of hearing, submission was advanced on behalf of the petitioner; that he will confine his prayer so far petitioner No. 2 is concerned and will not press the application so far petitioner no 1 is concerned. Accordingly, parties were heard.

2. The facts hading to this writ application are that the complainant, Eastern Travels Private Limited represented through its Chief Accountant lodged a complaint case stating therein that the complainant company is engaged in a business relating to travel agency where the petitioner No. 1 Kaushik Aditya was working under the complainant company as Branch Manager at its Kolkata Branch in course of service, he misappropriated huge amount to the extent of Rs. 17 lacs and odd when such mischief was detected, the petitioner No. 1 not only admitted his misdeed but he as well as his wife, petitioner No. 2 assured to repay

the said amount. Thereupon the petitioner No. 1 issued two cheques, one of Rs. 5,20,000/- and the other of Rs. 8,48,745/- drawn on Standard Chartered Bank, Kolkata in favour of the complainant company and the petitioner No. 2 stood as guarantor by putting her signatures over those cheques. When the aforesaid cheques were presented by the complainant before its banker, Bank of India, Main Branch, Jamshedpur, the said cheque got dishonoured for the reason of insufficiency of funds. Thereafter the complainant served a legal notice on 12.8.2009 calling upon the accused to make payment but they failed to make payment.

3. On the said complaint, a case was registered as Complaint Case No. 3393 of 2009 which was made over to the court of Sri Uttam Anand, Judicial Magistrate, 1st Class, Jamshedpur u/s 192 of the Code of Criminal Procedure for disposal in accordance with law, who on examining the complainant took cognizance of the offence u/s 138 of the Negotiable Instrument Act against the petitioners.

4. Being aggrieved with the said order, this writ application has been filed for quashing the said order as well as the entire criminal proceeding on various grounds inter alia that the petitioner No. 2 has never put her signatures over the aforesaid cheques, rather her signatures were forged.

5. It was also submitted that otherwise also her prosecution is bad as no criminal liability can be fastened against her as she has never been alleged to have issued the cheques in discharge of any debt or any liability rather the said allegation has been attributed to the petitioner No. 1 and on this ground alone, the order taking cognizance is fit to be set aside.

6. The aforesaid assertion could not be controverted on behalf of the opposite parties.

7. Thus, the petitioner No. 2 never appears to have issued any cheque in discharge of any debt or any liability and, therefore, she cannot be fastened with any criminal liability as contemplated u/s 138 of the Negotiable Instrument Act.

8. Accordingly the entire criminal proceeding including the order dated (sic) 2009 passed by Sri Uttam Anand, Judicial Magistrate 1st CLASS, Jamshedpur in Complaint case No. 3393 of 2009 is hereby quashed so far petitioner No. 2 is concerned.

9. In the result, this application is allowed but in part.