
(2013) 02 RAJ CK 0183

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 1257 of 2009

Kishan Lal

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Citation : (2013) 02 RAJ CK 0183

Hon'ble Judges : Munishwar Nath Bhandari, J

Bench : Single Bench

Advocate : Dileep Sinsinwar, for the Appellant; G.S. Rathore, Public Prosecutor for State and Mr. Sudhir Jain, for the Respondent

Final Decision : Disposed Off

Judgement

Munishwar Nath Bhandari, J.—By this petition, a challenge is made to the order dt. 01.08.2009. The case has chequered history inasmuch as on filing of complaint for offence u/s. 138 of Negotiable Instruments Act (for short "the Act"), the order of cognizance was passed taking into consideration affidavit filed by complainant. The revision petition was filed by accused to challenge the order of cognizance. It was precisely on the ground that a complaint filed u/s. 190 Cr.P.C. needs to be dealt with as per provisions of Cr.P.C. itself as provisions of Negotiable Instruments Act are not having over-riding effect. The order of cognizance could have been after recording statements of complainant u/s. 200 Cr.P.C.

2. In a petition filed by the non-petitioner earlier titled as Prakash Chand v. State of Rajasthan & Anr., S.B. Criminal Misc. Petition No. 1081/2009, decided on 22.07.2009, a direction was given that as and when complaints are filed u/s. 138 of the Act, it should follow mandate of Section 200 Cr.P.C. In view of the above, order of cognizance should be passed after recording statements of complainant u/s. 200 Cr.P.C. After decision on criminal misc. petition aforesaid at the instance of accused-non-petitioner herein, court below treated complaint as dismissed in ignorance of the fact that what was mandated by this court is requirement of

statement u/s. 200 Cr.P.C. before cognizance. The petitioner-complainant accordingly made a request to record his statement u/s. 200 Cr.P.C. for taking cognizance. The request aforesaid was turned down on the ground that order of cognizance earlier passed has already been set aside by High Court in the case of Prakash Chand (supra). It is without considering the fact that order of cognizance was set aside as it was without recording statement of complainant u/s. 200 Cr.P.C. It was by court who took cognizance on the affidavit filed by petitioner-complainant. For that default, a complainant cannot be made to suffer or his complaint cannot be thrown, rather final directions in Para 19 of the judgment in Prakash Chand (supra) needs to be considered. Para 19 of the judgment in Prakash Chand (supra) is quoted hereunder:

19. Keeping in view the significance of the question considered in this case and that the subordinate courts dealing with the complaints filed u/s 138 of Negotiable Instruments Act are required to follow the mandate of Section 200 Cr.P.C., I deem it just and proper to direct the Registrar General of this Court to circulate a copy of this judgment to all the Magisterial Courts in the State.

3. Perusal of above para shows that before cognizance, statement of complainant has to be recorded and which was precise prayer of the complainant. It is unfortunate that the court below took it as if order of cognizance has been set aside on merit and not on technical ground. It may be true that further direction is not given in the case of Prakash Chand (supra) to proceed with the matter, but if substance of the judgment is looked into, it was clarified as to how cognizance can be taken. In fact, the court below should have proceeded from the stage of recording statement of accused u/s. 200 Cr.P.C. for taking decision as to whether cognizance has to be taken or not.

4. In the light of aforesaid, impugned order is set aside. The court below is directed to proceed with the matter from the stage of filing of the complaint, thus record statement of the complainant u/s. 200 as mandated by this court in this case on a misc. petition filed by non-petitioner. It may be clarified that the judgment in Prakash Chand (supra) passed by this court was further considered in the subsequent judgment in the case of Rakesh Sharma v. State of Rajasthan & Anr., S.B. Criminal Misc. Petition No. 285/2010, decided on 2nd April, 2010 holding that cognizance can be taken even on submission of affidavit by complainant. With the aforesaid, revision petition stands disposed of. Record of this case may be sent back to the court below immediately.