(1992) 04 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 13099-M-91

Kishore Lahoti and Others — APPELLANT

Vs

Mahabir Prasad Maheshwari — RESPONDENT

Date of Decision : 09-04-1992

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 34, 420

Citation : (1993) 76 CompCas 782

Hon'ble Judges : H.S. Brar, J

Bench : Single Bench

Advocate : R.K. Jain, for the Appellant; S.C. Mohunta, Senior Advocate and Sanjay Bansal, for the Respondent

Judgement

Harphul Singh Brar, J.—This is a petition u/s 482, Code of Criminal Procedure, 1973, for quashment of complaint u/s 138 of the Negotiable Instruments Act, 1881, as amended up-to-date, read with Sections 420 and 34 of the Indian Penal Code, 1860, as well as for the quashment of the summoning order dated November 6, 1990, passed by the Judicial Magistrate First Class, Hissar, in that complaint.

2. Mahabir Parsad Maheswari, the respondent, filed a complaint u/s 138 of the Negotiable Instruments Act, as amended up-to-date (for short "the Act"), read with Sections 420 and 34 of the Indian Penal Code, stating therein that the accused petitioners, as part of the liability which they were owing to the complainant had issued one cheque No. 988290, dated June 24, 1990, for Rs. 1,00,000 from their account No. 627/827 in the Bank of Rajasthan Ltd., Tilak Marg, C.Scheme, Jaipur. The complainant stated that he presented the said cheque in his account No, SB-3361 with the Union Bank of India, Hissar, and the said bank sent the said cheque for clearing. The said cheque, when presented by the banker of the complainant in the Bank of Rajasthan Ltd., Jaipur, was returned by the said bank with the remarks that the drawer had allegedly got payment of

the said cheque stopped. It is then stated in the complaint that on enquiries the complainant came to know that, in fact, there were no sufficient funds and amount lying available in the said account of the accused which might have facilitated the clearing of the said cheque and to avoid the same, the accused in collusion with the bank officials put memo in the nature of payment stopped by the drawer, to help the accused and to defraud the complainant, which act of the accused and the bank officials was clearly aimed at causing financial loss to the complainant and a cheating act of the accused and the bank officials. It is further stated in the complaint that the banker of the complainant, i.e., the Union Bank of India, Hissar, sent the said intimation to the complainant, vide their letter dated September 21, 1990, upon which a notice dated September 24, 1990, was sent to the accused by registered acknowledgment post in compliance with the provisions of Section 138 of the Act.

3. After considering the complaint as well the preliminary evidence adduced by the complainant and other material placed before him, the Judicial Magistrate First Class, Hissar, summoned the accused to face trial for an offence punishable u/s 13 of the Act and u/s 420 read with Section 34 of the Indian Penal Code.

4. I have heard learned counsel for the accused petitioners. He has taken the following grounds for quashing the complaint dated October 15, 1990, as well as the summoning order dated November 6, 1990 :

(i) that admittedly as per document, exhibit P-C, which is attached as annexure P-3 with the petition, the payment was stopped by the drawer and according to the law laid down in Abdul Samad v. Satya Narayan Mahawar [1991] IAS (Banking) 134 : [1993] 76 Comp Cas 241, it is no offence u/s 148 of the Act, and there is no evidence brought on the record by the respondent to prima facie prove that there was no adequate balance in the account concerned. The respondent had examined himself as P.W.-1 and there is no other evidence/ witness from the Bank of Rajasthan to prima facie prove that the petitioners did not have adequate amount at the relevant time in their account ;

(ii) that the cheque in dispute is alleged to have been issued by Kishore Lahoti in his individual capacity, and, therefore, no part can be attributed to the other accused who have nothing to do with the present dispute ;

(iii) that no notice was given to the drawer of the cheque, which is a company ; and

(iv) that neither any offence u/s 138 of the Act, nor u/s 420 read with Section 34 of the Indian Penal Code, is made out since there is no cheating much less inducement of the respondent to deliver any property to the petitioners and in the same way Section 34 of the Indian Penal Code is also not attracted to the present allegation in the complaint as there is no allegation that the criminal act as alleged has been done by all the accused in furtherance of a common intention.

5. A reply has been filed by the respondent, wherein it is stated that no ground is made out to quash the complaint as well as the summoning order passed by the Judicial Magistrate First Class, Hissar.

6. Mr. S. C. Mohunta, learned senior counsel appearing for the respondent, states that it is prima facie proved on the record that there were no sufficient funds and amount available in the account of the accused which might have facilitated the clearing of the cheque in question. The complainant appeared as P.W.-1 before the learned Judicial Magistrate and stated categorically that there was no amount in the account of the accused which would have facilitated the clearing of the cheque and he had served a legal notice on September 24, 1990, by registered acknowledgment due post on the petitioners wherein it had been specifically stated that the cheque had not been cleared because of non-availability of funds in their account and, therefore, they were jointly and severally liable for having committed an offence u/s 138 of the Act. He further argues that Abdul Samad''s case [1995] 76 Comp Cas 241 is not applicable to the present case as in this case there is prima facie evidence to show that the cheque had bounced on account of inadequate balance in the account of the accused. The copy of the legal notice dated September 24, 1990, stated above, has been placed on the record, according to Mr. Mohunta. The notice was not replied to by the accused-petitioners at all.

7. Mr. Mohunta also states that it was not necessary to give notice to the drawer of the cheque, i.e., the company, as the complaint was lodged not against the company but against the individuals, who were responsible for issuing the cheque which was subsequently dishonoured. He further states that a clear-cut case against the petitioners is made out u/s 138 of the Act, as well as u/s 420 read with Section 34, Indian Penal Code.

8. I have heard learned counsel for the parties and gone through the petition, reply, as well as the summoning order of the learned Judicial Magistrate. As regards the evidence as to whether the cheque had been dishonoured due to inadequacy of the amount in the account of the petitioners, it is clearly stated by the complainant, Mahabir Parsad Maheswari, while appearing as P.W.-1 in court that there was no amount in the account of the accused which would have facilitated the clearing of the cheque. It is further stated in the reply that the complainant had incorporated the name of the clerk of the drawer''s bank in the list of witnesses and filed an application dated July 11, 1991, before the Judicial Magistrate, Hissar, for summoning the aforesaid witness for proving that there was no adequate balance in the account of the drawer either at the time of issuance of the cheque or at the time of clearance. The complain ant-respondent has also averred in the reply that he had produced in the court a legal notice dated September 24, 1990, which was alleged to have been sent to the accused-petitioners after the cheque had bounced. In that notice, he had made a specific allegation against the accused-petitioners that the dishonouring of the cheque in dispute was on account of the non-availability of requisite funds in their account

maintained by the bank and, therefore, they were all jointly and severally liable of having committed an offence u/s 138 of the Act. No reply whatsoever was given by the accused petitioners to that notice. The complaint and the summoning order, thus, cannot be quashed on this ground, as it is for the trial court to go into the factual position regarding that matter which has yet to be determined.

9. The argument of learned counsel for the petitioners about the issuance of notice to the company is also not tenable, as according to the averments made in sub-ground (ii) of the petition itself, the cheque in dispute is alleged to have been issued by Kishore Lahoti in his individual capacity and it was, thus, not necessary to issue notice to the company.

10. In view of my finding in respect of the first ground, the next ground of the petitioners that no offence u/s 138 of the Act is made out, also fails. It also cannot be held at this stage that no offence u/s 420 read with Section 34, Indian Penal Code, is made out, as it is a matter to be determined by the trial court from the evidence on the file when admittedly a cheque for Rs. 1,00,000 was issued by Kishore Lahoti and it was dishonoured later on.

11. The next argument of learned counsel for the petitioners that the cheque in dispute is alleged to have been issued by Kishore Lahoti in his individual capacity and, therefore, no part can be attributed to the other accused who have nothing to do with the present dispute, seems to be plausible, as the cheque had been issued by Kishore Lahoti (which fact has not been disputed by counsel for the respondent). Thus, no cause of action accrues against the other petitioners, that is, petitioners Nos. 2 to 4.

12. In view of my above discussion, this petition stands dismissed so far as accused petitioner No. 1, namely, Kishore Lahoti, is concerned.

13. However, the complaint and the summoning order, dated November 6, 1990, of the Judicial Magistrate, First Class Hissar, qua the other petitioners (Nos. 2 to 4), viz., Ashok Lahoti, Prithvi Raj Lahoti and Siri Krishan Lahoti, are quashed.

14. The petition succeeds to the context indicated above.

