
(2006) 12 DEL CK 0158

In the Delhi High Court

Case No : Criminal M.C. No. 6875 of 2006

Madan Mohan Gupta

APPELLANT

Vs

Samriti Bhasin and Another

RESPONDENT

Date of Decision : 06-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2007) 146 PLR 38

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : P.D. Sharma, for the Appellant; R.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—Respondent No. 2 has filed a complaint against the petitioner herein u/s 138 of the Negotiable Instruments Act (in short "the N.I. Act") on the basis of cheque No. 325947 dated 5.3.2001 in the sum of Rs. 1 lakh, which was dishonoured on presentation. After pre-summoning evidence, the learned Trial Court found that prima facie case was made out and, Therefore, cognizance was taken and summoning orders passed. The petitioner appeared and moved application for recall of the summoning orders on 22.11.2002. This application was dismissed by the learned trial Court vide order dated 31.5.2003 and the case was adjourned for framing of the notice. At the time of framing of notice, the petitioner again filed brief submissions and argued that notice could not be framed. The learned trial Court, however, rejecting those submissions, framed the notice against the petitioner vide order dated 17.7.2003. The petitioner preferred revision petition in this Court challenging the summoning orders as well as the order framing the notice. On 9.9.2003 this revision petition was disposed of by this Court. Perusal of the order would show that on the ground that a judgment of this Court in the case of Padmini Polymers Ltd. Vs. Unit Trust of India, was cited before the trial Court but was not considered, orders dated

31.5.2003 and 8.7.2003 were set aside and the matter was remanded to the Trial Court.

2. After remand of the case the learned MM noted that order dated 19.7.2003, vide which notice was framed, had not been set aside. He also pointed out that in view of the judgment of the Supreme Court in the case of Adalat Prasad Vs. Rooplal Jindal and Others, , the MM could not recall the summoning orders. Feeling aggrieved against this order the petitioner filed revision petition, which has also been dismissed vide order dated 22.8.2006. In this order it is specifically noted that on 19.9.2005 the learned Counsel for the petitioner did not press the application for recalling of summoning orders in view of the judgment in Adalat Prasad v. Roop Lal Jindal (supra) and the matter was, Therefore, put up for arguments u/s 251 of the Code of Criminal Procedure. On the adjourned date, i.e. 19.1.2006 the petitioner did not appear and, Therefore, order was passed listing the matter for evidence of the complainant. The learned A.S.J. further observed that order dated 19.7.2003 framing the notice had not been set aside and, Therefore, the MM was right in proceeding further in the matter as is clear from the following part of the order:

4. I have heard the learned Counsel and with this assistance gone through the impugned order and the proceedings of the trial Court annexed by the revisionist and also copy of order dated 9.9.2003 passed by Hon"ble High Court. Perusal of order passed by Hon"ble High Court reveals that framing of notice dated 19.7.2003 was not set aside by the High Court. Further, the trial Court was directed to decide the application for re-calling "summoning order". Challenge to summoning order was not pressed by the revisionist/accused as notice in order sheet dated 19.9.2005. Therefore, it can be said that revisionist/accused had accepted the order dated 31.5.2003, i.e. summoning order to be correct. Consequently, framing of notice on 19.7.2003 shall also be deemed to be not challenged. Even, the order dated 9.9.2003 passed by the Hon"ble High Court has not set aside the said order. Thus, summoning order dated 31.5.2003 and framing of notice dated 19.7.2003 hold their field. Moreover, Section 251, Cr.P.C. does not envisaged any hearing to the accused at the stage of framing of notice. I, Therefore, find no infirmity in the order dated 19.1.2006 passed by Sh. Lokesh Kumar, MM, Delhi.

3. The revision was also found to be belated and time-barred and this was the additional ground for dismissing the petition.

4. The petitioner has challenged the order dated 22.8.2006 by means of this petition. However, when confronted with the aforesaid position, as stated by the learned ASJ in the impugned order, the Counsel for the petitioner has no answer.

5. Insofar as the summoning orders are concerned, no doubt, this Court had remanded the case back to the trial Court for hearing the application of the petitioner as to whether the said summoning orders warrant to be recalled. However, thereafter because of the judgment in Adalat Prasad v. Roop Lal Jindal

(supra) by the Supreme Court, he could not deny that the learned MM had no power to recall the summoning orders. Therefore, this observation of the learned MM in the order dated 9.1.2006 is perfectly in order.