
(2008) 03 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 1178 of 2008

Mahendralal Shivhare

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 17-03-2008

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2008) 3 MPLJ 102

Hon'ble Judges : Brij Mohan Gupta, J

Bench : Single Bench

Advocate : Vivek Mishra, for the Appellant; V.S. Chaturvedi, Public Prosecutor for Respondent No. 1/State and Arvind Dwivedi, for the Respondent

Final Decision : Allowed

Judgement

B.M. Gupta, J.

This petition is for quashing the criminal proceeding pending against the petitioner in Criminal Case No. 4492/07 in the Court of Special Judicial Magistrate, Morena for the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the Act).

While drawing attention at notice dated 17th November, 2003 issued by the respondent No. 2, it is submitted by Shri Mishra that this notice has not been given with regard to specific amount of the cheque concerned. It contains the demand of whole of the amount due, as mentioned in para 2 of the notice, hence, as observed by the Apex Court in the case of M/s. Rahul Builders vs. M/s. Arihant Fertilizers & Chemical and another, 2008(1) MPLJ (Cri) 525 : 2008(3) MPLJ (SC) 1 : 2008 (1) M.P.H.T. 146 (SC), the criminal proceeding deserves to be quashed.

Shri Chaturvedi for the respondent No. 1/State has submitted that the case does not relate to the State.

Shri Dwivedi for the respondent No. 2 has drawn attention at paras 4 and 5 of the complaint filed by the respondent No. 2 dated 10th December, 2003 and submitted that the complaint has been filed with regard to the amount of cheque in question.

Admittedly, notice dated 17th November, 2003 has been issued by the respondent No. 2 to the petitioner u/s 138 proviso (b) of the Act, which goes as under:

138. Dishonour of cheque for insufficiency, etc., of funds in the account.--.....

Provided that nothing contained in this section shall apply unless--

(a).....

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c).....

On perusal, it appears that there should be a demand of the amount of the cheque. In the light of this provision, relevant extracts of the notice are to be perused, which are as under:

Upon perusal of the highlighted part of the notice, it appears that an amount of Rs. 8,00,000/- was due on the petitioner. Against the said amount, two cheques amounting to Rs. 2,00,000/- each were drawn by the petitioner in favour of the respondent No. 2. One, out of those two cheques, was dishonoured by the bank upon its presentation for encashment. Instead of demanding the amount of the said cheque of Rs. 2,00,000/-, at the most, along with its incidental charges, as it appears from the highlighted part of para 7 onwards, a demand of whole of the amount due, which is Rs. 8,00,000/- herein, was made and notice indicates that in case the whole of the amount is not paid, then the action under the Act will be taken. The notice does not appear to be issued for a specific demand of the amount of the cheque concerned. Hence, it cannot be said to be a valid notice. In similar set of facts and circumstances, the Hon''ble Apex Court in the case of M/s. Rahul Builders (supra) has taken a similar view. As facts being similar, there appears no need to reproduce the same in detail here in this order. The Hon''ble Apex Court, while considering the notice invalid, has affirmed the order of the High Court quashing the complaint on this ground. In the light of this judgment of the Apex Court and as observed hereinabove, in absence of valid notice, the criminal proceeding against the petitioner appears to be an abuse of the process of the Court.

Consequently, the petition is allowed. The criminal proceeding pending against

the petitioner in aforementioned criminal case for the offence punishable u/s 138 of the Act is quashed.