
(2009) 07 RAJ CK 0076

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 1948 of 2007

Maresh Kumar and Another

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : (2009) 07 RAJ CK 0076

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.R. Panwar, J.—By the instant criminal misc. petition u/s 482 CrPC, the petitioners seek quashing of the FIR No. 70/2007 dt. 03.02.2007, police station Hanumangarh Town for the offences under Sections 420 and 120B IPC.

2. Heard learned Counsel for the parties. Carefully gone through the FIR.

3. It is contended by learned Counsel for the petitioners that there was a civil transaction between the petitioners and respondent No. 2 Mohit Kumar, who is the complainant, for the purchase of rice for which payment was made by cheque. However, that cheque came to be dishonoured for want of sufficient fund and the instant FIR came to be filed. According to learned Counsel for the petitioners, if at all any offence is committed; it is the offence u/s 138 of the Negotiable Instruments Act, 1881 and not the offence punishable under Sections 420 and 120B IPC. Learned Counsel further submits that it is not in dispute that cheque was issued by the petitioners in favour of the complainant-respondent No. 2 in consideration of the rice received by them and it is also not in dispute that the respondent No. 2 presented the said cheque to the bank. However, on the presentation of the cheque to the Bank, it was dishonoured and returned unpaid on the ground of insufficiency of fund. At any rate, there is no element of

cheating or entering into any criminal conspiracy.

4. Learned Counsel appearing for the respondent No. 2 submits that after issuance of the cheque, the petitioners assured the complainant that he will pay the amount of cheque by bank draft and cheque may not be presented to the bank.

5. On close scrutiny of the FIR, the FIR discloses offence punishable u/s 138 of the Negotiable Instruments Act. But at any rate, there is no element of cheating or entering into criminal conspiracy. In the circumstances, therefore, in my view, allowing the FIR to continue further investigation is nothing but an abuse of the process of the Court.

6. Consequently, the criminal misc. petitions allowed and the FIR No. 70/2007, Police Station, Hanumangarh Town registered against the petitioners for offences under Sections 420 and 120B IPC is hereby quashed.