

Case No : Miscellaneous Criminal Case No. 4026 of 2001

APPELLANT

Jaswant Singh

RESPONDENT

Final Decision : Allowed

Judgement

4. After appearance, the petitioner raised the objection for maintainability of the

complaint on the ground that there was no fulfilment of mandatory requirement of Section 138 of the Act. His main objection was that the complainant had not sent legal notice to the petitioner within 15 days of the receipt of the intimation regarding dishonour of cheque. The Trial Court has rejected this objection holding that delay of 8 days in sending legal notice will not cause any harm to the respondent/complainant and his complaint will survive.

5. Against this order dated 2.3.2001 the petitioner went up in revision and the same has been dismissed in criminal revision No. 34/01 by order dated 30.08.2001 holding that after receiving the information of dishonour of cheque it is not necessary for the complainant to send notice within 15 days but the necessary requirement is that after receipt of information of service of notice the complaint was required to be filed, after completion of 15 days and he should wait for 15 days regarding the payment of cheque amount.

6. The thrust of the present case is that whether after receiving information of dishonour of cheque on 16.12.1998, notice u/s 138 Proviso (b) of the Act is essential to be sent within a period of 15 days from the date of receipt of notice or not. Counsel for the applicant submits that this Provision is mandatory and failure to this, the complaint is not maintainable. As against this. Counsel for the respondent/complainant submits that Provision is not mandatory and he placed reliance in the case Narsingh Das Tapadia Vs. Goverdhan Das Partani and Another, . This judgment is not helpful to the respondent because in this judgment the issue was altogether different. In this case complaint was filed before arising of cause of action in terms of Section 138 Proviso (c) to the Act on which the Supreme Court has held that instead of dismissing the complaint, taking of cognizance could be postponed till arising of cause of action.

7. The contention of the Counsel for the petitioner is duly supported by the judgment, rendered by the Supreme Court in the case M/s. Munoth Investments Ltd. Vs. M/s. Puttukola Properties Ltd. and Another, The Supreme Court has held in this judgment that u/s 138 Proviso (b) to the Act, notice has to be sent by the payee within 15 days from the date of receipt of information about dishonour of cheque by the Bank, More or less, the same issue has also been decided by the Supreme Court in the case Uniplas India Ltd. v. State Govt. of NCT of Delhi V (2001) SLT 272 : III (2001)CCR 92 (SC) : II (2001) BC 742 : (2001) 6 SCC 08. The Supreme Court has held in paragraph 11 that:

One of the indispensable factors to form the cause of action envisaged in Section 138 of the N.I. Act is contained in Clause (b) of the Proviso to that section. It involves the making of demand by giving a notice in writing to the drawer of the cheque "within 15 days of the receipt of the information by him from the Bank regarding the return of the cheque as unpaid" if no such notice is given within the said period of 15 days, no cause of action could have been created at all.

8. Thus, in view of the above legal position, the notice was not sent within 15 days but the same was sent after expiry of 15 days, would not give rise to the

cause of action in favour of the complainant/respondent and, therefore, the same is not satisfying one of the important ingredients for filing the complaint u/s 138 of the Act.

9. In the result, this petition is allowed and the proceedings pending before the Judicial Magistrate, First Class, Dharampuri in Criminal Case No. 209/99 is hereby quashed. There shall be no orders as to cost.