
(2014) 08 MP CK 0155
In the Madhya Pradesh High Court
Case No : CRR. 49/2011

Neerav Hathishah

APPELLANT

Vs

Anil Jain

RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 397, 401
Negotiable Instruments Act, 1881 (NI) — Section 138, 139, 142

Citation : (2014) 08 MP CK 0155

Hon'ble Judges : M.K. Mudgal, J

Bench : Single Bench

Advocate : Yogesh Chaturvedi, Advocate for the Appellant; Rajendra Jain, Advocate for the Respondent

Final Decision : Dismissed

Judgement

M.K. Mudgal, J.—Petitioner has filed this criminal revision u/s 397 read with section 401 of the Code of Criminal Procedure being aggrieved by the order dated 13.10.2010 passed by the Court of II ASJ, Fast Track Ashoknagar in Cr. Revision No. 1 of 2010 setting aside the order dated 25.11.2009 whereby, the plea was recorded u/s 138 of Negotiable Instrument Act (hereinafter referred to as "N.I. Act") by the court of Judicial Magistrate First Class Chanderi in Cr. Case No. 381 of 2007 and directing the trial court for reconsideration about the cognizance.

2. Learned counsel for the petitioner assailing the legality and propriety of the impugned order has submitted that the order passed by the learned ASJ is contrary to law as the court has ignored the provisions of section 139 and 142 of the N.I. Act. The counsel further contends that the order of cognizance dated 17.7.2007 was not challenged by the respondent-accused before the competent court, as a result, that order attained finality, owing to which, the respondent/accused could not challenge the order of plea recorded on 25.11.2009 whereby, the charge u/s 138 of N.I. Act was leveled against the respondent. Counsel

further pleads that the N.I. Act is a special law wherein procedure has been prescribed for taking cognizance of offence under the said Act. Learned counsel inviting attention to Section 142 of the N.I. Act has further contended that the cognizance was taken by learned trial court on the basis of criminal complaint filed by the petitioner/complainant and the order dated 17.07.2007 was passed. In such circumstances, the respondent/accused ought to have challenged the said order. Nonetheless, it was not done so. The counsel further contends that u/s 139 of the Act, there is a provision of presumption regarding the valid consideration of cheque. Learned counsel placing reliance upon the judgment in the case of Raj Kumar Khurana Vs. State of (NCT of Delhi) and Another, and Steel Tubes of India Vs. Steel Authority of India, has argued that the order dated 25.11.2009 of plea recorded passed by the learned trial court was just and proper. There was no need for the revisional court to interfere in the said order. On the aforesaid grounds, learned counsel has prayed for setting aside the impugned order.

3. Learned counsel for the respondent opposing the submissions made on behalf of the petitioner has submitted that the impugned order is valid as learned revisional court has found that no cognizance was taken against the respondent/accused u/s 138 of N.I. Act by the trial Court without which, the particulars of the offence u/s 138 of the N.I. Act could not be read over to the respondent. Learned counsel further contends that the learned revisional court has directed the trial court for consideration about the cognizance barring which, neither the order for issuance of summons for securing the presence of the accused can be passed nor particulars of the offences can be read over against the respondent/accused. Hence, learned counsel has prayed for dismissal of the revision petition.

4. Heard the arguments of both the parties and perused the record.

5. On perusal of the record, it is evident that a private complaint u/s 138 of N.I. Act Annexure-A was filed by the petitioner /complainant before the court of JMFC, Chanderi where from the order dated 17.07.2007 Annexure-D was passed which reads as under:

On bare reading of the contents of the aforesaid order, it is evident that the learned trial court without application of mind ordered for issuance of bailable warrant against the respondent/accused. Before issuing summons/warrant against the accused, the learned trial court ought to have taken cognizance u/s 190 of Cr.P.C. It is true a word "cognizance" has not been defined in the Cr.P.C. In this regard, learned Apex court has held in the case of Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, and Anil Saran Vs. State of Bihar and another, that taking cognizance of an offence u/s 190 of Cr.P.C. is a judicial act and therefore, application of mind is necessary. Considering the view taken by the Hon'ble Apex Court, the order dated 17.07.2007 cannot be treated to be a legal order as there is a lack of application of mind on the part of the court in issuing order for bailable warrant against the respondent/accused. The learned trial Court has not properly considered the

contents of the complaint as well as the documents enclosed with it as to whether the offence u/s 138 of N.I. Act was made out against the respondent/accused or not? In the said circumstances, the learned revisional court passing the impugned order has directed the learned trial court in para 6 to consider first of all the question of taking cognizance against the respondent/accused about whether any offence u/s 138 of N.I. Act is made out or not and for the said purpose setting aside the order dated 25.11.2009 learned revisional court has remitted the case back for reconsideration to the trial court.

6. The contention of the learned counsel for the petitioner that the order dated 17.07.2007 was not challenged by the respondent/accused and owing to that the respondent could not challenge the legality and propriety of the order dated 13.10.2010 does not appear to be justified as vide order dated 17.07.2007 the cognizance u/s 138 of N.I. Act was not taken by the trial court against the respondent/accused, because of that the said order could not have been challenged before the competent court. By the order dated 13.10.2010 particulars of the offence u/s 138 of N.I. Act has been read over to the respondent, therefore, the said order was challenged by him before the revisional court. So far as the cited judgments are concerned, the same do not help the petitioner in this case to the question involved in this matter as the cited judgments are based on different facts and circumstances.

7. In view of the facts and circumstances of the case, this court comes to the conclusion that the impugned order passed by the learned revisional court does not require any interference. The revision petition being devoid of merit is hereby dismissed. Considering the impugned order, the parties are directed to appear before the trial court on 29.09.2014. Copy of the order be sent to the trial court for information and necessary compliance.