
(2014) 11 MP CK 0010
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 5245 of 2014

Nitin Khandelwal

APPELLANT

Vs

Manjul and Others

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) 3 MPLJ 354

Hon'ble Judges : T.K. Kaushal, J

Bench : Single Bench

Advocate : Amit Bansal, Advocate for the Appellant; Sudanshu Vyas, Panel Lawyer, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

T.K. Kaushal, J.

1. Present petition is directed for quashment of private criminal complaint against the petitioner/accused under section 138 of the Negotiable Instrument Act pending in the trial Court at Criminal Case No. 20379/13, Manjul vs. Smt. Lata and others. On the basis of private criminal complaint dated 16-5-2013, respondent/complainant Manju Saxena implicated the petitioner and his wife/respondent No. 3 in this case for bounce of cheque of ` 1,61,000/-. According to complainant, petitioner and the respondent/complainant had been in good friendship and the petitioner and his wife jointly asked for money for six months and while the amount was not paid back then the respondent/accused Smt. Lata signed the cheque of ` 1,61,000/- in favour of the respondent/complainant as directed by her husband, the petitioner. On presentation of the aforesaid cheque in the bank on 15-3-2013, it was bounced on 29-3-2013 for want of sufficient funds. Respondent/complainant issued a joint notice dated 9-4-2013 by registered A.D. to the accused persons and the accused persons responded a false reply to it.

2. Learned counsel for the petitioner/accused placed reliance on a decision of the Supreme Court reported in Mrs. Aparna A. Shah Vs. Sheth Developers Pvt. Ltd. and Another, and submits that for the offence under section 138 of the Negotiable Instruments Act only the drawer of the cheque can be prosecuted and admittedly the cheque has been signed by Smt. Lata Khandelwal, the co-accused and has not been signed by the present petitioner, the proceedings against the present petitioner are not sustainable and its continuance will amount to abuse of process of law.

3. Per contra, placing reliance on a judgment reported in S.A. Nanjundeswara Vs. M.S. Varlak Agrotech Pvt. Ltd., , learned counsel for the complainant submits that in matter of section 138 of the Negotiable Instruments Act material statement of the party should be taken at its face value and normally the Court should not interfere in the jurisdiction of section 482, Criminal Procedure Code in such cases.

4. On perusal of complaint, it reveals that petitioner had a friendship with the complainant but on saying of the petitioner/accused, his wife issued a cheque of ` 1,61,000/-. In such a situation, signatory of the cheque had no friendship with the complainant but who had friendship in transaction did not sign the cheque. In such a situation, at its face value, it does not appear to be a case for quashment rather it seems to be a case of appreciation of evidence which could be done by the trial Court and whatever has been said by the present petitioner in this petition can be established in cross-examination of the respondent/complainant. It is interesting to note that what was the reply of the petitioner to the notice of the complainant has not been brought on record by either of the parties. It will make more clear as to what was the stand of the accused persons at the first instance. In such a situation, it does not seem to be a case of quashment rather it is a case of matter of evidence to be done by the trial Court at appropriate stage. Hence, the petition is dismissed for want of force.