
(2016) 01 JH CK 0231
In the Jharkhand High Court
Case No : Cr. M.P. No. 808 of 2014

Pabitra Banerjee

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202
Negotiable Instruments Act, 1881 (NI) — Section 138, Section 142

Citation : (2016) 01 JH CK 0231

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Sanjay Prasad, Advocate, for the Appellant; Amaresh Kumar, APP, for the Respondent

Final Decision : Disposed off

Judgement

Rongon Mukhopadhyay, J.—1. In this application, the petitioner has prayed for quashing the order dated 23.7.2013 passed by the learned Judicial Magistrate, Dhanbad in C.P. Case No. 1088 of 2013, whereby and whereunder, the cognizance has taken for the offence punishable u/s. 138 Negotiable Instrument Act (N.I. Act for short).

2. A compliant case was instituted by the opposite party No. 2, wherein it was alleged that the complainant/opposite party No. 2 had supplied goods to the petitioner on credit and ultimately an amount of Rs. 6,64,836/- became due against the petitioner. The petitioner had handed over five different cheques to the complainant and out of which when three cheques were presented for encashment, the same got dishonored, as the account was not in existence. Notices were issued to the petitioner, who had verbally assured of making payment of dues in installments, but the same was not paid and the complaint case was instituted.

Upon conducting an enquiry u/s. 202 Cr.P.C. by examining the witnesses and the complainant on Solemn Affirmation, the cognizance was taken for the offences

punishable u/s. 138 N.I. Act vide order dated 23.7.2013.

3. Heard Mr. Sanjay Prasad, learned counsel appearing for the petitioner, Mr. Shailesh, learned counsel appearing for the opposite party No. 2 and Mr. Amaresh Kumar, learned A.P.P. for the State.

4. Mr. Sanjay Prasad, learned counsel for the petitioner has submitted that the complaint petition has been filed beyond the time prescribed under the provisions of the N.I. Act and in such circumstances the same being in violation of the statutory provision deserves to be quashed and set aside. It has been submitted that the learned Judicial Magistrate, Dhanbad has failed to consider the fact that the complaint was instituted after more than a month and therefore, the order taking cognizance shows total non-application of mind on the part of the learned Judicial Magistrate.

5. Mr. Shailesh, learned counsel appearing for the opposite party No. 2 on the other hand has referred to the proviso of Section 142 of the N.I. Act and has submitted that sufficient reasons have been given in the complaint petition itself for delay in instituting the complaint which the learned Magistrate had considered and thereafter the cognizance has been taken vide order dated 23.7.2013 and in such view of the matter the present application is liable to be dismissed.

6. Before advertng to the submissions made on behalf of the learned counsel for the parties it would be necessary to refer to Section 138 of the N.I. Act, which reads as under:--

"138. Dishonour of cheque for insufficiency, etc., of funds in the account.--Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(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 thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice."

Section 138 demarcates the various stages from the presentation of the cheque to the bank up to the arriving of the cause of action. The complaint petition reveals that the complainant had deposited three cheques for encashment which were not honoured. A legal notice followed at which verbal assurance was given by the petitioner of making the payment of all the dues in installments. An undertaking to execute the verbal assurance was also entered into and since the petitioner ultimately refused to make payment of the amount, the complaint case was instituted. It has also been mentioned in the complaint case that the complaint case could not be filed earlier as he was undergoing treatment at Dhanbad as also at New Delhi.

7. Learned counsel for the opposite party No. 2 has while admitting to the fact that the complaint case was not instituted within the time stipulated under the statute, referred to Section 142 of the Act which reads as under:--

"142. Cognizance of offences.--Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a compliant, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such compliant is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138:

Provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138."

The proviso of sub section (b) to Section 142 reveals that the cognizance of a complaint can be taken by the court after the prescribed period if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.

8. It has been submitted that reasonable explanation had been furnished by the complainant and which has also been considered by the learned Judicial Magistrate and therefore, the proviso to sub section (b) of Section 142 having been complied with and therefore the complaint case can be said to be within time. However, except for making a bald statement with respect to the fact that the complainant was being treated at Dhanbad and at New Delhi and therefore the complaint case could not be filed within time does not inspire confidence as nothing has been brought on record in the present application to suggest so.

Moreover, the Solemn Affirmation of the complaint does not even whisper about such treatment. It therefore appears that the order dated 23.7.2013 taking cognizance for the offence punishable u/s.138 of the N.I. Act reflects non-application of judicial mind on the part of the learned Judicial Magistrate and in such circumstance therefore the impugned order deserves to be quashed and set aside. Even otherwise nothing has been indicated in the impugned order condoning the delay in instituting the complaint case.

9. In view of the aforesaid facts and circumstances, therefore, the order dated 23.7.2013 passed by the learned Judicial Magistrate, Dhanbad in C.P. Case No. 1088 of 2013, whereby and whereunder, the cognizance has taken for the offence punishable u/s. 138 Negotiable Instrument Act is quashed and set aside and the matter is remanded back to the learned Judicial Magistrate, Dhanbad to pass a fresh order in accordance with law.

This application is, accordingly, disposed of.