
(2016) 01 JH CK 0109
In the Jharkhand High Court
Case No : Cr. M.P. No. 3303 of 2013

Raj Veer Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

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

Citation : (2016) 2 Crimes 452 : (2016) 2 ECrC 96

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Anubha Rawat Choudhary, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

Rongon Mukhopadhyay, J.—1. Heard Mrs. Anubha Rawat Choudhary, learned counsel for the petitioner and learned A.P.P. for the State. No one appears on behalf of O.P. No. 2 in spite of valid service of notice.

2. In this application, the petitioner prays for quashing the entire criminal proceeding in connection with Complaint Case No. 2493 of 2012, including the order dated 8.1.2013, passed by Shri R.S. Mishra, learned Judicial Magistrate, 1st class, Jamshedpur, whereby and whereunder cognizance has been taken for the offence punishable under section 138 of the Negotiable Instruments Act. (hereinafter referred to as N.I. Act)

3. A complaint case was instituted by the complainant-O.P. No. 2, wherein it was alleged that for the purpose of purchase of welding rods from the petitioner, the complainant had advanced him a sum of Rs. 3 lacs and the welding rods were to be supplied within a period of two months. Since the accused-petitioner failed to supply the welding rods within the time stipulated, a demand was made by the complainant to refund his money and pursuant to which one post dated cheque bearing No. 705235 dated 10.06.2012 for Rs. 60,000/- was issued in favour of

the Firm of the complainant namely "Goyal Enterprises" as a part payment of the total dues amounting to Rs. 3 lacs. It has further been alleged that when the cheques were deposited by the complainant, the same got dishonored on the ground of insufficient funds. On the basis of aforesaid allegations, the complaint case No. 405 of 2013 was instituted against the petitioner.

4. Upon examining the complainant under solemn affirmation as well as his witnesses, cognizance was taken by the learned Judicial Magistrate, 1st class, Jamshedpur for the offence punishable under section 138 of the N.I. Act. vide order dated 08.01.2013.

5. Heard Mrs. Anubha Rawat Choudhary, learned counsel for the petitioner and learned A.P.P. for the State. No one appears for O.P. No. 2 in spite of valid service of notice.

6. Learned counsel for the petitioner has submitted that from the complaint petition itself, no offence under section 138 of the N.I. Act is made out against the petitioner for the reason that neither the cheque was issued by the petitioner nor the petitioner had any bank account with Syndicate Bank, Rajendra Vidyalaya, Jamshedpur. It has been submitted that the cheque infact had been signed in the name of R.V. Enterprises by one P. Singh and the petitioner although has been mentioned in the complaint petition as being the proprietor of R.V. Enterprises but he does not have any concern with the said Firm and on such score, the entire complaint case deserves to be quashed and set aside. In this context, reference has been made to the judgement in the case of Jugesh Sehgal v. Shamsheer Singh Gogi, reported in , (2009) 14 SCC 683.

7. At this, learned A.P.P. for respondent No. 1 has submitted that the petitioner issued cheque/cheques, which had got dishonored subsequently and since the question of whether the petitioner was a proprietor of R.V. Enterprises or not and whether he had issued the cheque or not can only be decided in course of trial and not in a proceeding under Section 482 Cr.P.C.

8. The main thrust of argument on behalf of the petitioner is to the effect that the petitioner did not have a bank account in Syndicate Bank, Rajendra Vidyalaya, Jamshedpur and he had never signed the cheque, which had got dishonored. In the supplementary affidavit, the bank note has been annexed and the reason for dishonor of the cheque has been indicated to be of insufficiency of funds. Learned counsel for the petitioner has referred to the case of Jugesh Sehgal v. Shamsheer Singh Gogi (Supra), wherein the requirement to constitute an offence under section 138 of the N.I. Act has been delineated and which is quoted as under:--

"13. It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of

that account;

(ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that 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;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank;

(v) the payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice. Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act."

9. The facts of the case in the case of *Jugesh Sehgal v. Shamsheer Singh Gogi* (Supra) can easily be distinguished from the facts of the present case inasmuch as in the case under reference, it was mentioned by the complainant in the complaint petition that the complainant had realised upon dishonour of the cheque that the same was issued from an account which was not maintained by the appellant.

10. The bank note categorises various reasons for returning of a cheque/instrument and some of the reasons includes closure of accounts or non existence of any such account. This case includes neither as the sole reason for dishonor of the cheque/cheques was insufficiency of funds. This would suggest that the cheque/cheques, which were alleged to have been issued, drawn on Syndicate Bank, Rajendra Vidyalaya, Jamshedpur, does suggest that there was a running account otherwise the cheque/cheques would have been shown to be dishonored on account of other reasons. Learned counsel for the petitioner has tried to co relate non maintenance of account in the concerned bank by the petitioner as the cheque said to have been dishonored was allegedly issued by some other person in the name of P. Singh. This Court under section 482 Cr.P.C. cannot quash the entire criminal proceedings in a mechanical manner or by conducting a roving enquiry to conclude that the signatory of the cheque/cheques was a person other than the petitioner. The powers under Section 482 Cr.P.C. have to be used sparingly and with circumspection. Since no finding can

be given by this Court with respect to the signatory of the cheque/cheques, which were dishonored, the subsequent or co-relative argument of learned counsel for the petitioner has also to ultimately depend on the actual identification of the signatory to the cheque/cheques. This can only be ascertained in course of trial and not in a proceeding under Section 482 Cr.P.C.

11. As a cumulative result of the discussions made above, I am not inclined to entertain this application and the same is accordingly dismissed.