

(2006) 10 BOM CK 0083

In the Bombay High Court

Case No : Criminal Writ Petition No's. 360 and 361 of 2006

Ramanand Shrikishan Sharma

APPELLANT

Vs

Kailasnath Ramraj Tripathi and Another

RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 195, 195(1), 202, 340(1)

Negotiable Instruments Act, 1881 (NI) — Section 138

Penal Code, 1860 (IPC) — Section 389, 406, 420, 464, 465

Citation : (2006) 6 BomCR 547 : (2007) 1 CivCC 658 : (2007) 5 RCR(Criminal) 191

Hon'ble Judges : Bhatia J.H., J

Bench : Single Bench

Advocate : P.N. Sonpethkar, for the Appellant; S.S. Wagh and S.P. Daund, APP for respondent No. 2 in Cri.W.P. No. 360/2006 and P.M. Shinde, APP for respondent No. 2 in Cri.W.P. No. 361/2006, for the Respondent

Final Decision : Dismissed

Judgement

Bhatia J.H., J.—Rule. Rule made returnable forthwith. With the consent of the parties both the petitions are taken up for final hearing immediately.

2. To state in brief, the present petitioner filed two complaints u/s 138 of the Negotiable Instruments Act against respondent No. 1 on the ground that he had issued two cheques which were, on presentation, dishonoured for want of sufficient funds and in spite of notice, respondent No. 1 failed to make payment. After filing of those complaints by the petitioner, respondent No. 1 lodged two complaints before the Judicial Magistrate for offences punishable under Sections 464, 468, 389, 420 read with Section 511 of the Indian Penal Code against the present petitioner. The learned Magistrate directed the police to make investigation u/s 156(3) of the Code of Criminal Procedure. After investigation, instead of filing charge-sheet the police submitted a report as if the investigation was u/s 202 of the Cri. P.C. In view of the police report and the evidence

collected by the police, the learned Judicial Magistrate issued process against the present petitioner. Those complaints were registered as Regular Criminal Case Nos. 1524/2002 and 293/2003 pending before the Court of the 8th Judicial Magistrate, First Class, Aurangabad.

3. The petitioner preferred applications for discharge before the learned Judicial Magistrate. Those applications were rejected. Thereafter, the petitioner filed Revision Application Nos. 205/2005 and 206/2005 which also came to be dismissed by the learned Additional Sessions Judge Aurangabad by orders dated 10-11-2005. The petitioner seeks to quash and set aside the orders passed by the courts below by filing these two writ petitions under Article 227 of the Constitution read with Section 482 of the Code of Criminal Procedure.

4. From the facts stated above it is clear that the dispute is pertaining to two cheques. According to the petitioner, the cheques were signed and issued by respondent No. 1 in favour of the petitioner, while, according to respondent No. 1, the cheques were forged by the petitioner before filing complaints u/s 138 of the Negotiable Instruments Act. The evidence which may be required to be given by respondent No. 1 in defence will also be required to be given in the complaints filed by him. The petitioner will have to prove that the cheques are genuine and signed by respondent No. 1 while respondent No. 1 will have to prove that the cheques are forged documents. In the interest of justice, to avoid any conflict of decisions both the matters should be heard and disposed of by the same Court together and at the same time.

5. Mr. Sonpethkar, learned Counsel for the petitioner, however, contended that unless in the complaints filed by the petitioner, the learned Judicial Magistrate comes to a conclusion that the cheques are forged action cannot be taken against the petitioner. In support of his contention he placed reliance upon M. Ravi and Others Vs. Mr. Elumalai Chettiar, , wherein almost in similar circumstances the Madras High Court held that the complaint filed under Sections 406, 465, 468 of the Indian Penal Code being premature and improper within the meaning of Section 195 of the Cri. P.C., the proceedings in that case taken against the petitioner/accused had to be quashed. In para 7 of the said judgment, the learned Single Judge of Madras High Court observed as follows:

7. As per Section 195(b)(ii) of Criminal Procedure Code, no Court shall take cognizance of any offence described in Section 463 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court except on the complaint in writing of that Court.

6. Mr. Sonpethkar also relied upon Shri H.V. Rangaswamy and another Vs. The State of Maharashtra and another, wherein this very question was discussed after referring to several authorities of the Supreme Court and different High Courts.

7. It may be noted that there was also conflict of opinion between two decisions of the Supreme Court each rendered by the Bench of three Hon"ble Judges i.e.

(1) Surjit Singh and others Vs. Balbir Singh, and (2) Sachida Nand Singh v. State of Bihar (1998) 2 S.C.C. 493. The matter was referred to the Constitution Bench of the Supreme Court in Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, . In para 6 of Iqbal Singh (supra) Their Lordships referred to the observations of the Supreme Court in Sachida Nand Singh's case as follows:

6. In Sachida Nand Singh after analysis of the relevant provisions and noticing a number of earlier decisions (but not Surjit Singh), the Court recorded its conclusions in paras 11, 12 and 23 which are being reproduced below:

11. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in Court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in custodia legis.

12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the Court records.

x x x

23. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a Court.

After analysing the legal position in detail in para 33 of the judgment in Iqbal Singh Marwah Their Lordships observed as follows:

33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cri. P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis.

8. From the above ruling it is clear that if the offence was committed pertaining to document prior to its production in Court and when it was not in custody of the Court, the bar u/s 195(1)(b)(ii) of the Cri. P.C. does not arise and complainant is at liberty to file complaint and take action as per law. In view of this legal position and the facts of the present case, it would be in the interest of justice that both the cases should be heard and disposed of simultaneously to avoid any conflict of decisions.

9. Therefore, I find that the impugned orders passed by the Court below need not be interfered.

10. For the aforesaid reasons, both the writ petitions stand dismissed. Rule discharged.