

(1991) 11 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 10233-M of 1990

Ramesh Chand

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 27-11-1991

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 420

Citation : (1992) 1 BC 275 : (1997) 1 DCR 244 : (1984) 1 DCR 244 : (1992) 2 RCR(Criminal) 167

Hon'ble Judges : J.B.Garg, J

Advocate : N.S.Boparai, S.N.Chopra, Advocates for appearing Parties

Judgement

J.B.Garg, J.

(1) Om parkash a partner of the firm m/s. Kewal ram bhiwani ram, sirhind, was in need of money and he allegedly obtained a loan of rs. 12,500/ on 27. 6. 1985 from bakshish singh gill, resident of kothi no. 5, rajwaha road, teh, patiala. On 3. 4. 1989 bakshish singh gill desired that om parkash should return the loan. On the aforesaid demand om parkash handed over a cheque of rs. 10,000/ on 3. 4. 1989 but it was dishonoured and on these allegations a complaint was addressed on 3. 5. 1989 to s. H. O. Police station sirhind and a case under section 420 of the indian penal code was registered on 9. 5. 1989 by shri gurmit singh head constable at the aforesaid police station. Subsequently, section 138 of the negotiable instruments act, has also been added and a report under section 173 of the code of criminal procedure has been prepared and besides om parkash other partners such as ramesh chand, megh raj and bhiwani ram are also proposed to be prosecuted. The judicial magistrate i class fatehgarh sahib has ordered framing of the charge under section 420 of the indian penal code and also under section 138 of the negotiable instruments act on 14. 5. 1991 and aggrieved against it the present petition under section 482 of the code of criminal procedure has been moved by the accused against state of punjab and also against bakshish singh gill, complainant.

(2) On behalf of the petitioners, it has been argued that a perusal of the complaint (annexure p 1) on which the f. I. R. Is based, itself shows that the money in question was lent on account of friendly relations as specifically mentioned in the complaint itself. Even if it was a transaction of loan, its mere breach could not give rise to criminal prosecution. There appears to be nothing in the complaint to show that the petitioners had any dishonest or fraudulent intention at the time the complainant parted with the money in question. Similarly there is nothing to indicate that the petitioners induced the complainant to pay the amount in question by any deceitful means. In the absence of these essential requirements reliance has been placed by the learned counsel for the petitioners on hari prasad chamaria v. Bishan kumar surekha and others, air 1977 s. C. 301 and it has been substantiated that the ingredients of the offence under section 420 of the indian penal code have not been established.

(3) It has further been argued that there was no allegation that the complainant was deceived to part with the amount in question. The requirements of section 415 of the indian penal code were wanting as observed in ramesh chander and others v. Kailash chander, 1982 p. L. R. 564 referred to by the learned counsel for the petitioners. Here reliance has also been placed on rajpal v. State of punjab and another, 1977 p. L. J. (cr.) 263 where a cheque of rs. 4. 000/ was dishonoured subsequent to the lending of the amount of the cheque and it was observed that it could not convert the civil liability into a criminal one. As regards the provisions of sections 138 and 142 of the negotiable instruments act, 1881, which have been added in the year 1988 the cognizance of the alleged offence by police is not free from doubt and in this regard attention has been invited to h. Mohan v. State of karnataka, 1991 isj (banking) 237 : [vol. 1 dctl 118] and the conclusion is that the present petition under section 482 of the code of criminal procedure is hereby accepted and the proceedings pending against the petitioners arising out of the report under section 173 of the code of criminal procedure initiated at fatehgarh sahib, district patiala, are hereby quashed. Petition allowed.