
(2009) 03 SHI CK 0045
In the High Court Of Himachal Pradesh

Rattan Chand

APPELLANT

Vs

Kanwar Ram Kripal and Another

RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2009) 2 ALD(Cri) 20 : (2010) 1 CivCC 566 : (2010) CriLJ 706 :
(2010) 5 RCR(Criminal) 700 : (2009) 1 ShimLC 535

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Surjit Singh, J.—Heard and gone through the record. Appellant is aggrieved by the judgment dated 17.1.2002 of the learned Additional C.J.M., Una whereby his complaint, u/s 138 of the Negotiable Instruments Act, read with Section 420 of the Indian Penal Code, which he filed against respondent Kanwar Ram Kripal, has been dismissed. The sole reason for the dismissal of the complaint, recorded by the learned trial Court Magistrate, is that the complaint was premature having been filed a day before the accrual of the cause of action. Respondent allegedly issued a cheque for Rs. 9500 in favour of the complainant. The cheque was dishonoured. On return of the cheque alongwith the necessary bank memo, complainant issued a notice to the respondent on 19th August, 1993. Complainant was supposed to have waited for 15 days before filing the complaint, as within that much time the respondent could have made the payment, as per requirement of law and escaped prosecution the alleged criminal liability. Appellant, however, rushed to the Court a day before the expiry of that 15 days time. The time was to expire on 4th September, 1993, but the complaint was filed on 3rd September, 1993. Matter was listed before the Magistrate on 13th September, 1993 and it was thereafter that preliminary evidence was recorded and then process was issued to the respondent. That means cognizance of the matter was taken by the Trial Magistrate after the expiry of 15 days time, prescribed to enable the person issuing the cheque to make payment.

2. Dealing with this kind of situation, Hon''ble Supreme Court in Narsingh Das Tapadia Vs. Goverdhan Das Partani and Another, has held that where the complaint is filed before expiry of 15 days, prescribed waiting period, instead of dismissing the complaint, the Magistrate should postpone the taking of cognizance. The aforesaid judgment applies to the facts of the case with double vigour because here the cognizance had in fact been taken, much after the expiry of the above said 15 days prescribed time limit.

3. In view of the above stated position, appeal is accepted, impugned judgment is set-aside and the case is remanded to the learned Additional Chief Judicial Magistrate, with a direction to decide the same afresh on merits, in accordance with law. Parties are directed to appear before the trial Court on 24.4.2009. Record of the trial Court be returned immediately, alongwith a copy of this judgment. Registry shall ensure that the record reaches the trial Court before the above said date fixed for the appearance of the parties in that Court.