
(2014) 07 P&H CK 0304
In the Punjab And Haryana At Chandigarh
Case No : CRM-M-33763 of 2010

Sandeep Mehra

APPELLANT

Vs

Chander Parkash Madan

RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

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

Citation : (2015) ALLMR(Cri) 231

Hon'ble Judges : Rekha Mittal, J

Bench : Single Bench

Advocate : Manuj Nagrath, Advocate for the Appellant; B.S. Jaswal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rekha Mittal, J.—The petitioner has invoked Section 482 of the Code of Criminal Procedure (in short "Cr.P.C.") seeking quashing of complaint No. 278/2 dated 12.7.2010 titled "Chander Parkash Madan vs. Sandeep Mehra @ Babl" pending in the court of Judicial Magistrate, Ludhiana (Annexure P-2), order dated 12.7.2010 passed by the Judicial Magistrate, Ludhiana (Annexure P-4) and proceedings emanating therefrom.

2. The respondent filed the aforesaid complaint on averments that in May 2010, the accused approached the complainant and asked him to arrange friendly loan of Rs. 7,00,000/- with an assurance to return the amount within one month but the complainant could arrange a sum of Rs. 6,00,000/- and lend it to the accused as a friendly loan. The accused issued a post dated cheque bearing No. 048183 dated 1.6.2010 for a sum of Rs. 6,00,000/- drawn on Oriental Bank of Commerce, Chaura Bazar, Ludhiana in favour of the complainant. The cheque on its presentation to the bank got dishonoured vide memo dated 3.6.2010 with remarks "no such account". The accused failed to make payment of the cheque amount despite receipt of legal notice.

3. Counsel for the petitioner contends that as the cheque in question was dishonoured by the bank with remarks "no such account", the proceedings u/s 138 of the Negotiable Instruments Act, 1881 (in short "the Act") are not maintainable as u/s 138 of the Act, criminal prosecution can be lodged when the cheque is returned by the bank unpaid either because, (a) the amount of money standing to the credit of the account is insufficient to honour the cheque; or (b) it exceeds the amount arranged to be paid from that account by an agreement made with the bank.

4. Another submission made by counsel is that the cheque in question was not issued by the petitioner in discharge of any liability as he never availed any loan from the respondent. The petitioner lost his bag containing his account books and cheque book and in this regard, he lodged Rapat No. 12 dated 29.7.2003 with Police Station, Kotwali, District Ludhiana vide Annexure P-5. It is further submitted that in order to avoid misuse of the cheque book, the petitioner closed his account in the year 2003. It is argued with vehemence that as the petitioner was not maintaining an account in the bank from which the cheque in dispute is allegedly drawn by him in June 2010, the essential ingredients of offence u/s 138 of the Act become missing and resultantly, the criminal proceedings cannot be allowed to continue.

5. Counsel for the respondent (complainant) contends that the petitioner has raised disputed questions of fact which are not amenable to adjudication in proceedings u/s 482 Cr.P.C. It is further contended that in the DDR No. 12 dated 29.7.2003 (Annexure P-5), there is no reference to loss of cheque book but it only refers to loss of account books of last six years of M/s. J.B. Factory. It is argued with vehemence that if the petitioner despite knowing that he had already closed Account No. 11061 earlier being maintained by him with Oriental Bank of Commerce, Chaura Bazar, Ludhiana had still issued the cheque dated 1.6.2010 in favour of the respondent and the cheque has been dishonoured with the remarks "no such account" meaning thereby that account stood closed, the petitioner cannot escape his liability u/s 138 of the Act though he may also be guilty of committing offence of cheating. In this regard, reference has been made to the judgment of the Hon"ble Supreme Court of India in NEPC Micon Ltd. Vs. Magma Leasing Ltd.

6. I have heard counsel for the parties and perused the case file.

7. The plea of the petitioner that he had lost his cheque book and the cheque in question has been misused by the respondent is a disputed question of fact requiring the parties to lead evidence for its adjudication, therefore, it is not open for decision in proceedings u/s 482 Cr.P.C. However, I find force in the contention of counsel for the respondent that DDR No. 12 dated 29.7.2003 relied upon by the petitioner, does not make reference to loss of cheque book. Counsel for the petitioner has not denied that the petitioner was earlier maintaining an account bearing No. 11061 with Oriental Bank of Commerce, Chaura Bazar, Ludhiana. The said account is statedly closed by the petitioner in the year 2003.

The cheque in question was returned with remarks "no such account". In these circumstances, the remarks recorded by the bank are to be read as that the account stood closed and therefore, the cheque could not be honoured.

8. The question now arises that if the petitioner had issued a cheque drawn on an account which was closed even prior to the issuance of the cheque, can the petitioner seek quashing of criminal proceedings by taking recourse to inherent jurisdiction of this Court u/s 482 Cr.P.C. In NECP Micon Limited's case (supra), cited by counsel for the respondent, the cheque was dishonoured on the ground that the account is closed. However, in that case, the account was closed after issuance of the cheque. The Hon'ble Supreme Court of India while dealing with the conditions necessary to complete offence u/s 138 of the Act laid down in the proviso (a), (b) and (c) of Section 138, answered the question "whether cheque is returned by the bank unpaid on the ground that "account is closed", would it mean that cheque is returned as unpaid on the ground that the amount of money standing to the credit of that account is insufficient to honour the cheque?" in the following terms:-

In our view, the answer would obviously be in the affirmative because cheque is dishonoured as the amount of money standing to the credit of that account was nil at the relevant time apart from it being closed. Closure of the account would be an eventuality after the entire amount in the account is withdrawn. It means that there was no amount in the credit of that account on the relevant date when the cheque was presented for honouring the same. The expression the amount of money standing to the credit of that account is insufficient to honour the cheque is a genus of which the expression that account being closed is specie. After issuing the cheque drawn on an account maintained, a person, if he closes that account apart from the fact that it may amount to another offence, it would certainly be an offence u/s 138 as there was insufficient or no fund to honour the cheque in that account; Further, cheque is to be drawn by a person for payment of any amount of money due to him on an account maintained by him with a banker and only on that account cheque should be drawn. This would be clear by reading the Section along with provisos (a), (b) & (c).

9. When the facts and circumstances of the present case are examined in the light of observations made in the aforesaid extract, I am of the considered opinion that even if the petitioner has issued a cheque on an account being maintained by him and the account was closed by him prior to issuance of the cheque, the net effect is that there was no money in the account on which the cheque was drawn and as a result, the cheque got dishonoured for want of funds to honour the cheque in that account attracting mischief of Section 138 of the Act. The petitioner in the circumstances of the present case may also be guilty of committing another offence for issuance of cheque from an account which already stood closed. Keeping in view conduct of the petitioner, he otherwise does not entitle himself to seek indulgence of this court in exercise of inherent jurisdiction u/s 482 Cr.P.C.

10. For the aforesaid reasons, the petition is dismissed.