

(2002) 05 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 17693-M of 2002

Sant Lal Bhatia

APPELLANT

Vs

City Credit and Leasing Company

RESPONDENT

Date of Decision : 20-05-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 256, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2002) 3 CivCC 204 : (2002) 3 RCR(Criminal) 250

Hon'ble Judges : R.C. Kathuria, J

Bench : Single Bench

Advocate : Vinod Gupta, for the Appellant; None, for the Respondent

Judgement

R.C. Kathuria, J.—Petitioner Sant Lal Bhatia, seeks quashing of order dated 7.3.2002 passed by the Additional Sessions Judge, Hisar, whereby order dated 10.7.2000 passed by the Judicial Magistrate 1st Class dismissing the complaint filed by respondents has been set aside and the trial Magistrate has been directed to conduct further proceedings in the complaint in accordance with law.

2. In order to focus the controversy involved, a few facts need to be noticed.

3. Respondent-complainant is a partnership firm and Rajinder Singh is acting as its Manager. This firm deals with finance and had been extending loan facilities to persons applying for the same. Petitioner, Sant Lal Bhatia, had taken loan from the complainant-company. For repayment of the loan amount, he had issued Cheque No. 00402131 dated 1.6.1998 for Rs. 2,50,000/- drawn on Bank of Baroda, Hisar, in favour of the complainant. At the time of issuance of the cheque, petitioner had assured the complainant that the cheque on presentation to the Bank would be honoured. However, when the cheque was presented for encashment, it was dishonoured and returned with the remarks "insufficient funds". Thereafter, registered notice dated 20.6.1998 was sent by the complainant to the petitioner-accused for making payment. On receipt of notice, petitioner made a request to the complainant to present the cheque again and

that request was acceded to by the complainant. The cheque in question was then presented again for encashment by the complainant to his bankers but it was again dishonoured and returned for want of sufficient funds. Another notice dated 17.8.1998 was sent by the complainant to the petitioner-accused calling upon him to make payment due to him. Despite that no payment was made. Under those circumstances, complaint u/s 138 of the Negotiable Instruments Act (in short the Act) was instituted by the complainant against the petitioner-accused.

4. On 10.7.2000 the Judicial Magistrate I Class, Hisar, dismissed the complaint by passing the following order:--

"No PW is present, The case called several times since morning but none has put appearance on behalf of the complainant. Waited sufficiently. It is already 1.00 P.M. It appears that the complainant is not interested to proceed further with the present complaint. Therefore, the complaint is hereby dismissed for want of prosecution. File be consigned to the record-room after due compliance.

Announced : 10.7.2000 Sd/- JMIC, Hisar."

5. Aggrieved by order dated 10.7.2000 of the Judicial Magistrate, an appeal was filed by the respondent-complainant. It appears that the appeal was treated as revision and for that reason, it was registered as Criminal Revision No. 41 of 2000. Vide order dated 7.3.2002 the Additional Sessions Judge finding that u/s 138 of the Act, no remedy for filing a second complaint was not available to the complainant in the interest of justice set aside the order of the Magistrate and directed him to continue further proceedings in the case. Aggrieved by the order of the Additional Sessions Judge, the present petition has been filed by the petitioner.

6. I have heard learned Counsel for the petitioner at length.

7. It is manifest from the record that preliminary evidence was closed by the complainant on 18.9.1998 and after taking into consideration the evidence so recorded, petitioner-accused was summoned to face trial vide order dated 18.9.1998. Petitioner-accused had put in appearance in Court on 27.10.1998 and on that very date, charge for offence u/s 138 of the Act was framed against him. Thereafter, the case was adjourned for evidence of the complainant for 13.1.1999. The case was then posted for 5.4.2000 when the Bar was on strike and the case was posted for evidence of complainant at his own responsibility for 10.7.2000. On 10.7.2000, the complainant failed to put in appearance and for that reason, order dismissing the complaint for want of prosecution was passed by the Magistrate.

8. Counsel for the petitioner has stated that the Additional Sessions Judge has given unjustified reasons in his order dated 7.3.2002 while setting aside order dated 10.7.2000 passed by the Judicial Magistrate I Class, Hisar. It was contended that the non-availability in law of a remedy to file a fresh complaint u/

s 138 of the Act, is no ground to allow the complainant to continue the proceedings indefinitely; the complainant was duty bound to produce evidence in support of the accusations made in the complaint and he having failed to produce any evidence on the date fixed or put in appearance without any sufficient cause, the Judicial Magistrate was fully justified to dismiss the complaint. This fact according to the Counsel has been totally ignored by the learned Additional Sessions Judge. Another legal plea taken by him is that revision against the order of discharge was not maintainable because the order of discharge has to be construed as an order of acquittal and the only remedy available to the complainant was to file an appeal u/s 378(5) of the Code. In this regard, support was sought from the observations made in *Raja v. State of Maharashtra* and *Anr. 1 (2000) BC 325: 2000(2) CCJ 88* and *Gurdev Singh v. State of Punjab 1994(1) CCJ 582*.

9. There is no quarrel with the proposition of law laid down in the above-mentioned cases. Manifestly, in this case, criminal complaint came to be filed by the complainant because the petitioner-accused had failed to honour the cheque issued by him. Section 138 of the Act was inserted in the Act by the Banking Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988) which came into force with effect from 1.4.1989. The Parliament in its wisdom had chosen to bring this section on the statute-book in order to introduce financial discipline in business dealings. Prior to insertion of Section 138 of the Act, a dishonoured cheque left the person aggrieved with the only remedy of filing a claim. The object and purpose of bringing new provisions in the Act was to make the persons dealing in commercial transactions work with a sense of responsibility and for that reason, under the amended provisions of law, lapse on their part to honour their commitment renders the persons liable for criminal prosecution. Therefore, while taking into account the stand taken by the petitioner, the above object of the enactment of Section 138 of the Act and the circumstances under which the complainant could not appear when the complaint was dismissed by the learned Magistrate, as such cannot be ignored. Petitioner has placed on record the grounds of revision filed by the respondent while assailing order dated 10.7.2000 passed by the Judicial Magistrate. It was specifically stated in the grounds for revision that on 10.7.2000 when the complaint was dismissed in default, another complaint titled as *C.C.L. Co. v. Satbir* was also fixed in the Court of Additional Chief Judicial Magistrate. It was also mentioned by the complainant that he had appeared on that date in the Court of Additional Chief Judicial Magistrate, Hisar. In addition, it was mentioned by him that he was present in Court since morning and after attending the Court of Additional Chief Judicial Magistrate, he came back to the Court and came to know that his complaint had been dismissed. He had further stated that the absence of the complainant was not intentional though the learned Additional Sessions Judge has not adverted to this explanation.

10. The Judicial Magistrate while acting u/s 256 of the Code has also to take into account that the powers vested have to be exercised in the interest of justice. In

the present case, the Magistrate has not recorded any reason as to why he did not deem it proper to adjourn the hearing of the case to some other date. The Magistrate has been specifically empowered to dispense with the personal attendance of the complainant and proceed with the case. The efforts of the trial Magistrate should be to dispose of cases on merits instead of dismissing them in default, in this case, the complainant had been pursuing his complaint from 16.9.1998 onwards and only on the date fixed i.e. 10.7.2000 he was not present at the time when the case was called and was present in the Court of Additional Chief Judicial Magistrate in another case. Thus, under the circumstances of the case, the Magistrate was wholly unjustified in dismissing the complaint for want of prosecution.

11. Coming to the other plea raised by the Counsel for the petitioner that order of discharge amounted to acquittal and it could only have been challenged in this Court and that in the revision petition filed by the respondent the Additional Sessions Judge could not have set aside order dated 10.7.2000 of the Magistrate, as has been done vide order dated 7.3.2002 as the revision petition was not maintainable would not stand in the way of this Court to exercise power vested u/s 482 of the Code to take correctional measures after order dated 10.7.2000 has come to its notice because continuance of this order of the Magistrate would cause miscarriage of justice. Therefore, order of the Magistrate dated 10.7.2000 being illegal has to be set aside and cannot be upheld as sought to be contended by the Counsel for the petitioner. It is ordered accordingly. The trial Magistrate shall proceed to decide the case on merits. Petition stands disposed of accordingly.