(2004) 12 MP CK 0033

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 3433 of 2004

Santosh Kumar and Another — APPELLANT

Vs

Amit Sirvaiya — RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:
- Criminal Procedure Code, 1973 (CrPC) — Section 482
- Negotiable Instruments Act, 1881 (NI) — Section 138
- Penal Code, 1860 (IPC) — Section 420

Citation : (2005) 2 MPHT 343

Hon'ble Judges : Sugandhi Lal Jain, J

Bench : Single Bench

Advocate : R.S. Verma, for the Appellant; Pradeep Naveriya and Sanjay Soni, for the Respondent

Judgement

S.L. Jain, J.—Applicants have filed this petition u/s 482 of the Cr.PC for quashing the order dated 16-2-2004 passed by Sessions Judge, Tikamgarh, in Criminal Revision No. 111/2003 maintaining the order dated 24-4-2003, passed by Chief Judicial Magistrate, Tikamgarh in Criminal Case No. 658/2002.

2. Non-applicant Amit Sirvaiya filed a complaint u/s 138 of the Negotiable Instrument Act (henceforth ''the Act'') before Chief Judicial Magistrate, Tikamgarh alleging inter alia that the petitioners issued different forged cheques on different dates which were dishonoured and returned by the bank unpaid because the amount of money standing to the credit of the petitioner account was insufficient to honour the cheque.

3. Respondent/complainant served notice to the petitioners informing them that the cheques issued have been dishonoured due to insufficiency of funds. Notice was replied by the petitioners denying all the allegations made in the notice. They also stated that no cheque was issued by them to the respondent.

4. It was stated by the applicants in their aforesaid reply that the alleged cheques are the cheques of account of firm M/s Fresh Enterprises in which

petitioner No. 2 is the proprietor. The cheque book of the firm was lost and intimation to that effect was given to the manager of that bank and also to the police.

5. Since the money was not paid despite notice, respondent filed a complaint u/s 138 of the Act against both the applicants. The learned CJM, Tikamgarh took the cognizance on 18-6-2002 for the offence punishable u/s 138 of the Act only and not u/s 420 of the IPC. Particulars of offence under Sections 138 of the Act were read out to the applicants on 24-4-2003.

6. Being arrived by the order dated 24-4-2003 passed by CJM, Tikamgarh, the applicants filed a revision before Sessions Judge, Tikamgarh the same was dismissed by the impugned order.

7. Shri Pradeep Naveriya and Shri Sanjay Soni filed his memo of appearance on behalf of the respondent but none appeared on behalf of the respondent at the time of hearing of the case. I have heard Shri R.S. Verma, learned Counsel for the applicants.

8. Learned Counsel for the applicants submitted that cheque book of the firm M/s Fresh Enterprises was lost. A report to that effect was lodged to the police station to the bank manager was also informed. Learned Counsel also submitted that the account in the bank was maintained by applicant No. 2 Smt. Kanchan Agrawal alone and the cheques were issued by her and not by applicant No. 1 who is a Government servant and has been falsely implicated to black mail him.

9. So far as the first submission is concerned, at this stage, it can not be said that the cheques alleged to have been issued by applicants are forged. It is for the applicant No. 2 to prove her defence that the cheques are forged and do not bear her signatures.

10. There is no scope for interference in exercise of jurisdiction u/s 482 of the Cr.PC on this ground alone.

11. So far as the second contention is concerned, I find force in the contention. A perusal of the copy of cheque which is a subject-matter of a complaint reveals that cheque was issued by Kanchan Agrawal and no one else. There is no allegation that account was maintained by applicant No. 1. A perusal of Section 138 of the Act reveals that the section applied only when the account is maintained by person issuing the cheque and also where cheque is drawn by the account holder for payment of money to another person from out of that account for the discharge, in whole or in part of any debt or any other liability, and the same is returned by the bank unpaid.

12. In the present case, applicant No. 1 was neither the account holder nor the alleged cheque was drawn by him, applicant No. 1 could not have been prosecuted u/s 138 of the Act.

13. It is true that complaint was filed u/s 420 of the IPC also and for the purpose

of Section 420 of the IPC, it is not necessary that the cheque should be issued on an account maintained by the accused. But in the present case, offence was registered only u/s 138 of the Act and not u/s 420 of the IPC.

14. Since the applicant No. 1 is neither the person who maintained the account nor the person by whom the cheque was drawn case u/s 138 of the Act can not proceed against him. Petition is, therefore, partly allowed. The orders impugned are set aside so far as they relate to applicant No. 1 Santosh Kumar. Proceedings u/s 138 of the Act against applicant Santosh Kumar are quashed. However, the proceedings shall precede against applicant No. 2 Smt. Kanchan Agrawal.