

(2001) 10 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 6368-M of 1997

Satish Kumar

APPELLANT

Vs

Vijay Kumar Aggarwal

RESPONDENT

Date of Decision : 01-10-2001

Acts Referred:

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

Citation : (2002) 1 RCR(Criminal) 471

Hon'ble Judges : K.C. Gupta, J

Bench : Single Bench

Advocate : Vinod Kumar Khungar, for the Appellant; None, for the Respondent

Judgement

K.C. Gupta, J.—This is a petition u/s 482 of the Criminal Procedure Code for quashment of the order dated 3.4.1996 passed by the Chief

Judicial Magistrate, Ferozepore, whereby the complaint u/s 138 of the Negotiable Instruments Act was dismissed without summoning the

respondent and the judgment dated 10.12.1996 passed by Additional Sessions Judge, Ferozepure, whereby the revision petition filed by the

petitioner was also dismissed.

2. Briefly stated the facts are that the petitioner Satish Kumar filed a complaint u/s 138 of the Negotiable Instruments Act (hereinafter referred to as

the Act) against the Vijay Kumar Aggarwal. It was alleged in the complaint that the petitioner was the proprietor of the shop known as M/s. S.K.

Traders situated in Basti Mehrianwali, Ferozepur City and the respondent was also having his shop near his shop. It is further alleged that the

petitioner was having dealing with the respondent and the respondent had made a demand for money for the marriage of his sister and for

investment in the shop. In all he borrowed an amount of Rs. one lac from the petitioner on different occasions in the year 1994. In order to discharge his liability, he issued Cheque No. 562253 dated 23.12.1994 for Rs. one lac drawn on Bank of Maharashtra, Ferozepur City, in favour of the petitioner. The said cheque was presented for encashment through Punjab National Bank, Ferozepur City but the same was returned by the Bank of Maharashtra with the remarks that there were not sufficient funds in the drawer's account.

3. The petitioner thereafter sent notice to the respondent through his Counsel calling upon him to make payment of Rs. one lac within 15 days of the receipt of notice, failing which he would be constrained to file a complaint u/s 138 of the Negotiable Instruments Act. The notice was received back undelivered with the endorsement of the postman dated 11.3.1995. The respondent did not pay the amount and as such the complaint was filed.

4. The Chief Judicial Magistrate, vide order dated 3.4.1996 dismissed the complaint u/s 203, Cr.P.C. Aggrieved by the said order, the petitioner filed revision petition before the Additional Sessions Judge, Ferozepur, which was dismissed vide order dated 10.12.1996 passed by the Additional Sessions Judge, Ferozepur.

5. Aggrieved by the said order, the petitioner has filed the present petition u/s 482, Cr.P.C. I have heard the Counsel for the petitioner Mr. Vinod Kumar Khungar and have gone through the petition. Learned Counsel for the petitioner contended that the Chief Judicial Magistrate had dismissed the complaint vide order dated 3.4.1996 on the ground that the notice as contemplated under Proviso, (c) of Section 138 of the Act was not properly given as the address was incomplete and in the absence of the notice, the respondent could not have been proceeded u/s 138 of the Act.

6. Counsel for the petitioner contended that the postman had wrongly mentioned on the registered envelope Annexure P-5 that the registered notice could not be delivered to the addressee as the address was incomplete. He further contended that according to this report, the postman did not come into contact at all with the address but on the back side of the registered letter, Annexure P-1 (Exhibit P5 in the lower Court) it is shown that the postman had made report on 6.3.1995 that the shop was closed and

then nothing is mentioned on 7th March, 8th March and 9th March, 1995 and further he has made a report on 11th March, 1995 that the notice had been refused. In the wake of report dated 11th March, 1995, the postman could not have made report dated nil whereby he had written that the registered notice could not be delivered to the addressee on account of incomplete address as he had made a report on the back of the registered letter dated 11.3.1995 that the respondent had refused to take the notice, He has further contended that the refusal report is as good as service on me respondent. For this contention, he placed reliance on a decision, K. Madhu v. Omega Pipes Ltd., Ernakulam 1995 (1) RCR 296, in which it was observed that where a registered letter is sent on correct address, then its refusal would mean proper service. It has been further observed in it that "giving notice" in the context is not the same as receipt of notice and "giving is the process of which receipt is the accomplishment. The payee has to perform the former process by sending the notice on the drawer on his correct address". Therefore, in these circumstances, I hold that the report of the postman is incorrect and in fact the address was correct and the respondent had met the postman and had knowledge of the notice on 11.3.1995. Therefore, it is deemed to be a valid service. Consequently, the order passed by the Chief Judicial Magistrate dated 3.4.1995 and the judgment dated 10.12.1996 passed by the Additional Sessions Judge being perverse and illegal are set aside. Now the Trial Court-is directed to proceed with the complaint in accordance with law.