
(2015) 05 P&H CK 0174
In the Punjab And Haryana At Chandigarh
Case No : CRM-A-868-MA-2014

Shakti Industrial Corporation

APPELLANT

Vs

Ridaus Auto Components Private Limited and Others

RESPONDENT

Date of Decision : 04-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 256
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2015) 05 P&H CK 0174

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : J.S. Cooner Advocate, for the Appellant

Final Decision : Allowed

Judgement

Paramjeet Singh, J.—Leave granted.

2. Registry is directed to register the petition as an appeal.

3. The Appellant invokes inherent power of this Court for setting aside the order dated 03.05.2014 passed by the Judicial Magistrate Ist Class, Gurgaon whereby complaint under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (the N.I. Act) filed by appellant-complainant was dismissed for non-prosecution.

4. As per the averments made in the appeal, respondent No. 1 through respondents No. 2 and 3 had placed order upon the appellant at its aforesaid office for purchase of material and against the said orders, the material was supplied by the appellant to respondent No. 1 from its aforesaid office. While placing orders, respondents No. 2 and 3 had assured the appellant that payment in respect of the material supplied by it would be made by respondent No. 1 in reasonable time. In discharge of its liability towards the appellant, respondent No. 1 through respondents No. 2 and 3, had issued cheque bearing No. 013282 dated 08.03.2013 for an amount of Rs. 87,895/- drawn on HDFC Bank, H Block,

Opposite Celebrity Homes, Palam Vihar, Gurgaon and upon presentation of the cheque in question by the appellant in bank, the same was returned unpaid for reasons "funds insufficient". The appellant also got issued legal notice to the respondents for making the payment, but to no avail. Therefore, the complaint was filed.

5. On the basis of preliminary evidence, the respondents were summoned by the Judicial Magistrate Ist Class, Gurgaon. On 03.05.2014, the complaint was fixed for hearing after service on the respondents, but neither the complainant-appellant nor its counsel could appear in the Court and vide impugned order dated 03.05.2014, the complaint was dismissed for non-prosecution.

6. I have heard learned counsel for the appellant and perused the record.

7. None has put in appearance on behalf of the respondents despite service.

8. Learned counsel for the appellant contended that the complainant-appellant and its counsel wrongly noted down the date as 05.05.2014 instead of 03.05.2014. The absence of appellant and its counsel was neither intentional nor willful on 03.05.2014 but due to wrongly noting down the date as 05.05.2014. The appellant had been appearing in the Court on each and every date of hearing and on that date i.e. 03.05.2014, the absence was due to noting down the wrong date.

9. I have considered the contentions of learned counsel for the appellant.

10. Section 256 Cr.P.C. reads as under:

256. Non-appearance or death of complainant -

(1) If the summons has been issued on complaint and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the nonappearance of the complainant is due to his death.

11. The aforesaid proviso provides that the Magistrate has discretion to dismiss the complaint if on any date fixed for hearing the complainant fails to appear in the Court and at the same time, if the Magistrate finds that there is some reason or that the presence of the complainant was not required, he in his discretion can adjourn the complaint. However, the Magistrate while acting under the said

proviso has to take into consideration that the powers vested therein have to be exercised in the interest of justice.

12. In the present case, the appellant has taken a ground that due to wrong noting down the date, neither the appellant nor its counsel could appear in the Court and resultantly, the complaint was dismissed for non-prosecution. The plea taken by the appellant appears to be genuine as it would not have intentionally allowed the complaint to be dismissed in default as its valuable right of proceeding in the complaint under Section 138 of the N.I. Act, wherein a cheque for Rs. 87,895/- has been dishonoured, would have been foreclosed. (emphasis supplied) The bona fide of the appellant is established from the fact that its representative had been appearing on each and every date of hearing earlier and one date could not appear because of noting down the wrong date. Merely on that account, the complaint should not have been dismissed in default. Moreover, dismissal of a case in default unnecessarily delays the disposal of the same on merits as application for restoration of a petition challenging order of dismissal in default consumes more time than simply adjourning the case for a date. A perusal of the impugned order dated 03.05.2014 reveals that the complaint was not listed for any particular purpose, rather it was fixed for presence of accused by way of notice and presence of appellant was not necessary on that date.

13. In *Associated Cement Co. Ltd. Vs. Keshvanand*, (1998) 1 AD 69 : AIR 1998 SC 596 : (2007) 4 BC 153 : (1998) 91 CompCas 361 : (1998) CriLJ 856 : (1998) 1 Crimes 88 : (1998) 4 JT 268 : (1998) 119 PLR 812 : (1997) 7 SCALE 734 : (1998) 1 SCC 687 : (1997) 6 SCR 500 Supp : (1998) AIRSCW 192 : (1998) 1 Supreme 116 , the Hon"ble Supreme Court has held as under:

16. Reading the Section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the magistrate shall not acquit the accused. Second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day the magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice.

14. For the reasons stated above, the appeal is allowed and impugned order dated 03.05.2014 is set aside. The complaint filed by the appellant is restored to

its original number. The appellant through its counsel is directed to appear before the trial court on 28.05.2015 for further proceedings.