
(2003) 05 AHC CK 0018
In the Allahabad High Court
Case No : Criminal Revision No. 103 of 2001

Shamim Akhtar

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 01-05-2003

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2003) 2 ACR 1942

Hon'ble Judges : K.N. Sinha, J

Bench : Single Bench

Advocate : Pankaj Bharti, for the Appellant; G.S. Hajela and A.G.A., for the Respondent

Judgement

K.N. Sinha, J.—The present revision has been filed against the order dated 2.12.2000, passed by the II Ird Additional Chief Judicial Magistrate, Saharanpur in case No. 551 of 2000, National Handicrafts v. Shamim Akhtar case No. 551 of 2000, u/s 138 of the Negotiable Instruments Act, dismissing the objections filed by the revisionist against the summoning order dated 5.8.1999.

2. The brief facts giving rise to this revision are that M/s. National Handicrafts filed a complaint against Shamim Akhtar applicant u/s 138 of the Negotiable Instruments Act, about the dishonour of cheque No. 652643 dated 15.9.1998. On this complaint the applicant was summoned as accused. The applicant filed an objection before the concerned Magistrate, who rejected the same. The present revision has been filed against the said order.

3. I have heard the learned Counsel for the parties and perused the impugned order and the complaint etc.

4. A perusal of the complaint shows that there is no date of presentation of the cheque nor the date of its dishonour. There is also no definite date about the service of the notice. The order impugned appears to have been prepared without intensively considering these factors. The Court has observed that service

of the notice is sufficient but how it is sufficient is not clear. Section 138 of the Negotiable Instruments Act lays down that the cheque shall be presented within a period of six months from the date on which it was drawn or within a period of its validity. The demand should be made to the drawer in writing within 15 days of the receipt of the information by him from the Bank regarding the return of the cheque as unpaid and if the drawer fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within 15 days of the receipt of the said notice, the complaint can be filed, in order to bring a case under the provisions of Section 138 of the Negotiable Instruments Act. The Court should have examined all these aspects. The trial court has failed to correctly consider the matter within the frame work of law and has summarily disposed of the objection against the summoning order.

5. Consequently the revision is allowed. The order dated 2.12.2002 passed by the II Ird Additional, C.J.M., Saharanpur is set aside. The case is sent back to the learned II Ird A.C.J.M., Saharanpur with a direction to consider the objection of the accused-applicant in the light of the above observation and then dispose it of by a reasoned order.