
(2011) 08 UK CK 0054

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C482) No. 68 of 2010

Shamshad Ali

APPELLANT

Vs

State of Uttarakhand and Anees Ahmad

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

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

Citation : (2011) 08 UK CK 0054

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—By means of this petition moved u/s 482 of Code of Criminal Procedure, 1973 (for short Code of Criminal Procedure.), the Petitioner has sought quashing of the proceedings of criminal complaint case No. 364 of 2009, Aness Ahmad v. Shamshad Ali, relating to offence punishable u/s 138 of Negotiable Instruments Act, 1881, pending in the court of 1st Additional Civil Judge (Jr. Div.)/Judicial Magistrate, Roorkee, District Haridwar.

2. Heard learned Counsel for the parties, and perused affidavit, counter affidavit and rejoinder affidavit.

3. Brief facts, of the case, are that Respondent No. 2 Anees Ahmad (complainant) filed a criminal complaint relating to offence punishable u/s 138 of Negotiable Instruments Act, 1881, against the Petitioner Shamshad Ali on 25.07.2009, with the allegation that towards the repayment of liability on the part of the present Petitioner he gave a cheque No. 262557 for an amount of ` 2,00,000/-in favour of the Respondent No. 2 on 20.06.2009. Said cheque (copy Annex. 2) was presented before State Bank of India for collection from H.D.F.C. Bank. Vide memorandum dated 23.06.2009 (copy Annex. 3) Respondent No. 2 received information of return of the cheque on account of "funds insufficient". On this complainant (present Respondent No. 2) sent a notice dated 07.07.2009

(copy Annex. 1 to the counter affidavit) through a registered post through his Advocate to the present Petitioner Shamshad Ali. However, the notice sent by the registered post received back on 21.07.2009, by the Respondent No. 2 with the endorsement BAR BAR JANE PAR BHI NAHIN MILA ATAHA WAPAS (even after going again and again not met hence returned). Thereafter Respondent No. 2 filed the criminal complaint in question on 25.07.2009, before Ist Additional Civil Judge (Jr. Div.)/Judicial Magistrate, Roorkee, which is registered as criminal complaint case No. 364 of 2009. The trial court, after taking affidavit, and other papers on record issued summoning order against the present Petitioner on 11.08.2009. Hence this petition on the ground neither the complainant waited for one month as required under Clause (b), nor waited for 15 days as required under Clause (c) of section of 138 of Negotiable Instruments Act, 1881.

4. It is argued on behalf of the present Petitioner that the trial court has wrongly taken cognizance of the offence punishable u/s 138 of Negotiable Instruments Act, as the same was entertained in violation on the above mentioned provisions of the law. It is further argued that the proceedings of the criminal complaint case are liable to be quashed. In support of his case, the Petitioner has relied in the case of Anil Kumar Shukla v. State of U.P. 2008 (2) ALJ 417.

5. However, on going through the relevant provisions of the law, and the latest case laws on the point, this Court finds no force in the argument advanced on behalf of the Petitioner. Clause (b) of Section 138, only requires that notice in writing be given within 30 days. It does not require to wait for 30 days. If the complainant issued notice on 7.07.2009 (after receipt of the information from the bank on 23.06.2009), that the cheque was not honoured for insufficient funds, the complainant was at liberty to give notice on any day within 30 days. Since, the notice was sent on 07.07.2009, by a registered post as such the notice was given within 30 days period.

6. Also, the contention that the complainant should have waited for 15 days on receipt of notice back before filing the criminal complaint appears to be misconceived. What we have to keep in mind is the object of the law. The period of 15 days provided in Clause (c) of Section 138 of Negotiable Instruments Act, 1881, is to allow the accused to pay the amount of money for which the cheque was dishonoured. In the present case, though the criminal complaint was filed on 25.07.2009, i.e., within 15 days of receiving back the notice, but the cognizance order was passed on 11.08.2009, i.e., after 15 days of receiving back notice by the complainant. In the similar circumstances, this Court in the case of Deepshikha v. State of Uttarakhand 2010 (1) UD 587, has held that if the summoning order or the cognizance order passed after a period of 15 days of service of notice, the criminal complaint cannot be quashed only on the ground that the same was presented within 15 days of service of notice on the accused. Same view has been expressed in the case of Narsingh Das Tapadia Vs. Goverdhan Das Partani and Another, . Also, other High Courts i.e. Madhya Pradesh High Court in Hemant Sharma v. Kishorilal Vanshkar 2009 (1) DCR 578,

Rajasthan High Court in *Firm Naveen Project Ltd. v. State of Rajasthan*, 2005 (2) DCR 534, and Allahabad High Court in *Sant Kumar Khera v. State of U.P.* 2007 (1)DCR 604, have taken similar view.

7. Apart from the above mentioned cases decided by various courts, and the Supreme Court in *C.C. Alavi Haji Vs. Palapetty Muhammed and Another*, , it has held that if the accused after receiving summons from the court within 15 days (in case where notices is said to have been not received by him by post) fails to pay the amount mentioned in the cheque, it is not open for him to say that he was not served with the notice as required under Clause (c) of Section 138 of Negotiable Instruments Act, 1881.

8. For the reasons as discussed above, I find no force in this petition which is liable to be dismissed. Accordingly, the petition u/s 482 Code of Criminal Procedure, is dismissed. Interim order dated 27.01.2010, passed by this Court is hereby vacated. The trial court may proceed further with the trial.