

(2013) 10 MP CK 0153

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 8325 of 2012

Smt. Anita

APPELLANT

Vs

Asharam

RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Citation : (2014) 1 MPHT 136 : (2014) 1 MPLJ 707 : (2014) 2 RCR(Civil) 609 : (2014) 2 RCR(Criminal) 432

Hon'ble Judges : D.K. Paliwal, J

Bench : Single Bench

Advocate : A.R. Shivhare, for the Appellant; Y.S. Tomar, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Paliwal, J.—This petition is u/s 482 of Cr.P.C. for quashing the order dated 2.8.2010 passed by JMFC, Gwalior, in Criminal Complaint Case No. 11750/2010 and further proceeding of the said case, whereby cognizance has been taken against the petitioner for the offence punishable u/s 138 of the Negotiable Instruments Act (in short the Act). Briefly stated the facts of the case are that complainant/respondent Asharam has filed a criminal complaint alleging that petitioner is engaged in sale of medicines in the name of Pharma Agency. The petitioner has given power of attorney to her husband for doing the aforesaid business. It is further alleged that the complainant has family relations with the petitioner and her husband. The petitioner and her husband were in need of money for purchasing house, therefore, they had taken a loan of Rs. fifteen lacs from the respondent/complainant on different dates. When the respondent/complainant asked the petitioner to refund the money, petitioner gave a cheque bearing No. 973789 dated 29.4.10 of Rs. fifteen lacs to the respondent/complainant after signing it in presence of Nirmal Kumar Agrawal and assured the respondent/complainant that she will keep sufficient fund in her account. It is further alleged that respondent/complainant presented the said cheque in his account in Punjab National Bank, Branch Gwalior, but the same was dishonoured

with a note of insufficient fund on 26.6.10. Thereafter, the respondent/complainant sent notice by registered post as well as by UPC to the petitioner. The registered notice has been received by the petitioner on 7.7.10 and the notice sent by UPC has also received by the petitioner. It is further alleged that in spite of receipt of notice, the petitioner has not paid the amount within fifteen days. The petitioner was fully aware at the time of giving cheque that there shall be no sufficient fund in her account and hence the cheque will not be encashed. Thus, the petitioner has committed the offence punishable u/s 138 of the Act. On the basis of the aforesaid complaint, the learned JMFC, Gwalior, vide order dated 2.8.10 holding that there is prima facie ground to proceed, directed that complaint be registered and the petitioner be summoned. Being aggrieved, this petition has been filed.

2. It is submitted by learned counsel for the petitioner that the petitioner has never issued any cheque to the complainant. The husband of the petitioner is carrying the wholesale business of medicines in the name of Farma Traders. Earlier, Amit Gupta, who is the nephew of the petitioner, had stolen several cheques of the petitioner from the shop. The husband of the petitioner lodged a written report at police Station, Kotwali, mentioning numbers of all the cheques in the report. The matter was inquired into and after enquiry FIR at Crime No. 188/10 under Sections 420, 120B, 34 of IPC was registered against Amit Gupta and complainant Asharam Mavai. After investigation, charge-sheet was filed and Amit Gupta and complainant were tried in Sessions Trial No. 133/11. It is further submitted that instant complaint has been filed in counter-blast to the aforesaid Sessions Trial. In sessions trial No. 133/11, handwriting expert has examined the signature of petitioner Smt. Anita on the disputed cheque with her specimen signature and opined that there is dissimilarity between the two. The allegations levelled in the complaint against the petitioner are totally false and no offence is made out against the petitioner. It is prayed that proceedings of criminal complaint case No. 11750/10 pending in the Court of JMFC, Gwalior, be quashed.

3. Learned counsel for the respondent submits that in Sessions Trial No. 133/11, respondent/complainant has been acquitted vide judgment dated 22.6.13, hence, the proceedings of criminal complaint case initiated on the basis of the complaint of the respondent-complainant cannot be quashed.

4. I have considered the submissions of learned counsel for the parties and perused the record.

5. As per the complaint filed by the respondent, complainant has family relations with petitioner and her husband. The husband of the petitioner was in need of some money for purchasing a house. The respondent/complainant had given Rs. fifteen lacs to the petitioner and her husband on different dates and the petitioner has given cheque No. 973789 dated 29.4.10 of Rs. fifteen lacs to the complainant, which he submitted in his bank. The cheque was dishonoured with a note of insufficient fund. He served the notice to the petitioner, even then petitioner has not paid the amount. From the perusal of reply of the notice given

by the petitioner, it appears that petitioner has denied that her husband has taken Rs. fifteen lacs from the respondent. It is further denied that petitioner gave a cheque of Rs. fifteen lacs to the respondent admitting her liability. It is further denied that entries of the cheque have been made by the petitioner and cheque has been handed over to the complainant in presence of Nirmal Kumar. It is stated that on 27.4.10 the petitioner was not at Gwalior. The petitioner has never met with the complainant personally and she does not know the complainant by his name and face. It is alleged that husband of the petitioner has lodged a report that certain cheques have been stolen and matter is under investigation by police Station, Kotwali.

6. The learned counsel for the petitioner has filed a copy of judgment passed in Sessions Trial No. 133/11 by Tenth ASJ, Gwalior, on 22.6.13. It is contended by learned counsel for the petitioner that government handwriting expert has opined that there is characteristic difference between the signature of Smt. Anita on the disputed cheque and her specimen signature, therefore, the prosecution of the petitioner is an abuse of process of law. Learned counsel for the respondent submits that learned ASJ has acquitted Amit Gupta and complainant from the charges for which they were tried, therefore, it cannot be held that cheque given by the petitioner is forged. The learned counsel for the petitioner has drawn the attention of this Court towards the appeal preferred by the petitioner against the judgment passed in S.T. No. 133/11 by ASJ, Gwalior, before this Court which is pending as Criminal Appeal No. 543/13 and vide order dated 7.8.13 notice has been issued to respondent-Asharam and Amit Gupta on the question of admission. The learned ASJ in Sessions Trial No. 133/11 has not given a finding that cheque No. 973789 is not signed by Smt. Anita. The handwriting expert opined that there is characteristic difference between the signature of Smt. Anita on the disputed cheque and her specimen signature. On the basis of this opinion, it cannot be held that cheque was not given by Smt. Anita, as alleged in the complaint. In the complaint, it is specifically alleged that the cheque has been given by the petitioner in presence of Nirmal Agrawal after signing it. Thus, the allegation made in the complaint filed by the respondent against the petitioner prima facie discloses the commission of offence punishable u/s 138 of the Act. Thus, taking into consideration that the complaint filed by the respondent prima facie discloses the commission of offence punishable u/s 138 of the Act, it cannot be held that prosecution of the petitioner amounts to an abuse of process of law. This petition is bereft of any merits and is therefore dismissed.