

(2006) 07 P&H CK 0157

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 11952-M of 2005

Smt. Kamla and Others

APPELLANT

Vs

C.P. Bhardwaj

RESPONDENT

Date of Decision : 20-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 256, 377, 378, 394, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2007) 3 BC 233 : (2006) 4 CivCC 135 : (2006) 144 PLR 174 : (2006) 4 RCR(Civil) 799 : (2006) 4 RCR(Criminal) 869

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : Sudhir Aggarwal, for the Appellant; Vinod S. Bhardwaj, for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—The petitioners, who are the legal heirs of one Brahm Parkash, the drawer of the cheque in question, have filed this petition u/s 482 of the Code of Criminal Procedure for quashing of the complaint filed by the respondent u/s 138 of the Negotiable Instruments Act (hereinafter referred to as "the Act") as well as the summoning order and the consequent proceedings.

2. I have heard counsel for the parties.

3. It has not been disputed before me that in this case, the dishonoured cheque was issued by Brahm Parkash, who has expired. The petitioners are his legal heirs and after serving the notice, the complaint has been filed regarding the said cheque against the petitioners.

4. Learned Counsel for the petitioners contends that no complaint u/s 138 of the Act could have been filed against the petitioners, who are the legal heirs of deceased Brahm Parkash. He submits that from the plain reading of Section 138 of the Act, it is clear that no proceeding alleging offence u/s 138 of the Act can

be filed against the legal heirs. In support of his contention, learned Counsel has relied upon the following judgments of various High Courts:

- (i) Bhupinder Lima v. State of A.P. 1999 (4) All.M.R. 20 .
- (ii) Draupadi Devi v. State of Rajasthan 2000 (4) RCC 257
- (iii) Girja v. K. Vinay 2004(1) Recent Criminal Cases 458 (Ker.).
- (iv) Savita H. Sorle v. Rajesh Damidar Sarode 2006(3) RCR 216 .

5. The Karnataka High Court, in *Girja v. K. Vinay* (supra), has observed as under:

...on careful perusal of the relevant statutory provisions of law, it is clear that the intention of the legislature was not to make the provisions for prosecuting the legal heirs of the drawer of a cheque, in the event of dishonour under the provisions of Negotiable Instruments Act. It is needless to say that the provisions of the Negotiable Instruments Act are a self contained enactment and wherever there is lacking, the provisions of the Code of Criminal Procedure will have to be pressed into service. As stated earlier, there are absolutely no statutory provisions made under the Negotiable Instruments Act to cover the situation like this. Under the provisions of Section 394 of the Cr.P.C., it is seen that the said section deals with the abatement, of appeals filed u/s 377 or 378 of the Cr.P.C. This provision cannot be pressed into service for the reason that the Trial Court or this Court has not been dealing with an appeal under the said provisions. It is also necessary to mention that the provisions of Section 256 of the Cr.P.C. deal with the situation that arises after the death of the complainant. In the case in hand, the drawer of the cheque, the accused in a proceeding of this nature, had died even earlier to the presentation of the complaint. Such being the case, the provisions of Section 256 of the Cr.P.C. also cannot come to the aid of the complainant. From this aspect, it is clear that the statute law in this regard is totally silent to meet the situation. When this be the intention of the Legislature, the Courts of law will have to interpret the law, keeping in mind, the golden rules of interpretation and the Courts should always interpret the law keeping in view the letter and spirit of law and such an interpretation should advance the purpose of legislation. It is needless to say that if the Courts do not resort to this exercise, the result thereon will not only be irregular and also illegal, so as to vitiate the entire proceedings.

6. Learned Counsel for the respondent could not controvert the aforesaid factual and legal position. Thus, in view of the aforesaid admitted facts and legal position, I am of the opinion that filing of the complaint by the complainant as well as the process issued by the Magistrate against the petitioners is nothing but an abuse of the process of the Court. On the plain reading of Section 138 of the Act, it is clear that the proceedings in the complaint alleging offence u/s 138 cannot be initiated against legal heirs of the person, who had issued the cheque.

7. In view of the above, the petition is allowed and the complaint dated 10.6.2004, the summoning order, passed by the Court of Chief Judicial

Magistrate, Gurgaon and the consequent proceedings are quashed.