
(2013) 02 JH CK 0049

In the Jharkhand High Court

Case No : Criminal M.P. No. 1646 of 2012

Smt. Rekha Singh

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2013) 2 JLJR 209

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Atanu Banerjee, for the Appellant; Manoj Kumar No. 4 for the State and Mr. Jai Prakash for the O.P. No. 2, for the Respondent

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioner and learned counsel appearing for the opposite party No. 2 as well as learned counsel appearing for the State. This application has been filed for quashing of the order dated 17.7.2012 passed in C.P. Case No. 1041 of 2012, whereby and whereunder cognizance of the offence punishable u/s 138 of the N.I. Act has been taken against the petitioner.

2. It is the case of the complainant that the complainant as well as the petitioner were partners in a company. In course of time, the complainant resigned from the partnership company and then there was settlement in between the petitioner and the complainant, whereby a sum of Rs. 23,00,000/- [Twenty Three Lakhs] was to be paid to the complainant. In discharge of that liability, a cheque of Rs. 23,00,000/- [Twenty Three Lakhs] was issued by the complainant from his own account, which on its deposit, got dishonoured with endorsements as insufficient fund, stop payment and payment stop. Thereupon, a notice was sent to the petitioner by which the petitioner was called upon to make payment. When the payment was not made, a complaint was lodged, which was registered as Complaint Case being C.P. Case No. 1041 of 2012, in which cognizance for the offence punishable u/s 138 of the N.I. Act has been taken against the petitioner

vide order dated 17.7.2012 which is under challenge in this application.

3. Mr. Banerjee, learned counsel appearing for the petitioner submits that in terms of the provision as contained in Section 138 of the N.I. Act, one may bring a case for commission of the offence u/s 138 of the N.I. Act, if the cheque given by a person towards discharge of debt is returned by the Bank for the reason that there has been insufficiency of money or that it exceeds the amount arranged to be paid from that account by an agreement made with that Bank, but here the cheque has been returned on account of the fact that the petitioner when lost the cheque advised the Bank not to make payment and that was the reason for cheque being not honoured and in this situation, no offence is made out u/s 138 of the N.I. Act.

4. Learned counsel in support of his submission has referred to a decision rendered in a case of Raj Kumar Khurana Vs. State of (NCT of Delhi) and Another, .

5. It was further submitted that while putting resignation before the Board, the complainant has admitted that no dues of the company ties to him and in such situation, any cheque even issued to the complainant cannot be said to be in discharge of any debt.

6. However, learned counsel appearing for the opposite party No. 2 submits that the complainant may have written to the Board about company owing nothing but after settlement arrived at, in between the complainant and the Board, it was found that a sum of Rs. 23,00,000/- [Twenty Three Lakhs] is due to be paid to the complainant and then the cheque was issued of Rs. 23,00,000/- [Twenty Three Lakhs] by the petitioner to the complainant.

7. There has been absolutely no doubt that only in two situations as incorporated u/s 138 of N.I. Act, one can maintain the prosecution u/s 138 of the N.I. Act.

8. Here in the instant case, statement has been made in the complaint that cheque got dishonoured on account of insufficiency of the fund, stop payment and payment stop. In that situation, it cannot be decided at this stage that the cheque got dishonoured on account of the fact that the advice was there of stopping payment and not on account of insufficiency of fund.

9. In that situation, I do not find any illegality on the part of the court in taking cognizance of the offence. So far the case referred to on behalf of the petitioner is concerned, the fact of the case was that cheque had been dishonoured with the remark that "cheque reported lost by the drawer" and under this situation, the Hon'ble Supreme Court has been pleased to hold that prosecution u/s 138 of the N.I. Act cannot be maintained. Here in the instant case, as has been stated above, the complainant has made out a case that cheque got dishonoured on account of insufficiency of the fund, payment stop and stop payment. Therefore, in my view, the ratio laid down in that case is not applicable in the instant case.

10. Thus, this application stands disposed of. However, the petitioner would

always be at liberty to take these pleas which have been raised in this application and to substantiate it by any documents available to him.