
(2007) 09 AHC CK 0172
In the Allahabad High Court

Smt. Sunita Agrawal

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 28-09-2007

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2007) 09 AHC CK 0172

Hon'ble Judges : R.K. Rastogi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Rastogi, J.—This is an application u/s 482 Cr. P.C. for quashing the proceedings of Criminal Complaint Case No. 1588 of 2002, M/S Annapurna Impex v. Smt. Sunita Agrawal pending before the C.J.M. Gyanpur Bhadohi u/s 138 of the Negotiable Instruments Act.

2. The facts relevant for disposal of this application u/s 482 Cr. P.C. are that M/S Annapurna Impex Khamariya, the complainant opposite party No. 2 had filed a complaint against the accused applicant u/s 138 of the Negotiable Instruments Act (hereinafter referred to as the Act) with these allegations that a sum of Rs. 3,80,000/- of the complainant was outstanding against the accused applicant. The complainant asked the applicant to pay back the amount. Then she gave a Cheque of Rs. 3,80,000/- to the complainant on 2.7.2000. The said Cheque was presented by the complainant in the Bank on 2.7.2000 but the Bank returned the Cheque with the remark of insufficient funds. The complainant asked the accused about dishonour of Cheque then she replied that sufficient amount shall be deposited in the Account shortly and then the Cheque may again be presented for payment. Then the complainant continued to make inquiry about the funds in the Account of the accused but since no money was received in that Account, the complainant sent a notice to the accused on 27.8.2002 by registered post. It was received by the accused on 31.8.02. Then the complainant again sent the Cheque to the Bank and the Bank informed the complainant on 2.9.02 that there

was no amount in the Account. In this way she has committed an offence punishable u/s 138 of the Negotiable Instruments Act. So the complainant filed the aforesaid complaint u/s 138 of Negotiable Instruments Act.

3. The applicant has alleged in the application u/s 482 Cr.P.C. that the provisions of Negotiable Instruments Act were not complied with and so the complaint was not maintainable. No counter affidavit was filed either by the opp. Party No. 1 or by the opp. Party No. 2. Learned Counsel for the opp. Party No. 2 was present in the court at the time of arguments and he stated before the court that he did not propose to file any counter affidavit but he was ready for arguments. I have heard the learned Counsel for the parties and perused the record.

4. It is to be seen that in the present case, according to the allegations made in the complaint, the accused applicant gave a Cheque dated 2.7.02 amounting to Rs. 3,80,000/- to the complainant opp. Party No. 2 and this Cheque was sent to the Bank for payment on the same day and on the same day the Bank informed the complainant that the amount of Cheque could not be paid due to insufficiency of funds. Under Clause (b) of the proviso to Section 138 of the Act, as it stood on that date, the notice regarding dishonour of Cheque must have been given to the accused within a period of 15 days of receipt of above information from the Bank. As such the notice must have been given within a period of 15 days from 2.7.02 i.e. the date of information regarding dishonour of Cheque but the notice was not given during this period and it was given on 27.8.02 i.e. after expiry of above statutory period and thus the Clause (b) of the proviso to Section 138 of the Act was not complied with.

5. Learned Counsel for the complainant in support of his contention that there was compliance of the legal requirement relied upon a ruling of Patna High Court in the case of Nagendra Prasad Singh and Anr. v. State of Bihar and Anr. 2006 (4) Crimes 491.

6. I have very carefully gone through the above ruling. In this case notice was sent to the accused within the statutory period of one month from the date of receipt of information regarding dishonour of Cheque and so the complaint was held to be maintainable u/s 138 of the Act. The facts of the present case are different from those referred to above and so it does not render any help to the complainant. It has further been alleged in the complaint that the notice dated 27.8.02 was received by the accused on 31.8.02. The time of 15 days has been allowed to the drawer (accused) under Clause (c) of the proviso to Section 138 of the Act to make payment from the date of receipt of the said notice and on expiry of the above period of 15 days, the complaint is to be filed within a period of one month as required under Sub clause (b) of Section 142 of the Act. According to the complainant his notice dated 27.8.02 was received by the accused on 31.8.02. Thus, the time limit for payment expired on 15.9.02 and the complaint must have been filed within a period of one month from the above date but it was not filed within this period and was filed on 24.10.02 i.e. after expiry of the statutory period.

7. It has also been alleged in the complaint that after service of notice on 31.8.02 the complainant again sent the Cheque to the Bank but the bank again returned the same with the remark of insufficient funds. The cheque was initially presented for payment on 2.7.02 but if the complainant wanted to obtain fresh limitation on the basis of fresh presentation of this Cheque, he must have given a fresh notice of demand within 15 days of the date of subsequent receipt of information from the Bank regarding dishonour of Cheque and then the complaint should have been filed within a month on expiry of the period of 15 days allowed to the accused from the date of service of notice. But no such notice was given by the complainant to the accused in the present case on subsequent dishonour of Cheque. As such the present complaint is apparently time barred and the learned Magistrate had taken cognizance of a time barred complaint. Hence continuation of such complaint would amount to abuse of the process of the court.

8. I, therefore, allow this application and quash the proceedings of Criminal Complaint Case No. 1588 of 2002, M/S Annapurna Impex v. Smt. Sunita Agrawal pending before the C.J.M. Gyanpur Bhadohi u/s 138 of the Negotiable Instruments Act.