
(2022) 09 JH CK 0039

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2312 Of 2016

Sourav Ghosh Choudhury

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 19-09-2022

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138, 142, 142(b)

Citation : (2022) 09 JH CK 0039

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : R.S. Mazumdar, Amrita Kumari, Navneet Sahay

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. R.S. Mazumdar, learned senior counsel appearing for the petitioner, Ms. Amrita Kumari, learned counsel for the State and Mr. Navneet Sahay, learned counsel for opposite party no.2.

2. This petition has been filed for quashing the order dated 16.10.2015 passed in P.C. Case No.320/2015, pending in the court of the learned Chief Judicial Magistrate at Saraikella.

3. The complainant has filed the petition alleging therein that he was a partnership firm and accused petitioner is running a factory of manufacturing Hume Pipe and both were well known to each other and maintaining good relation during business transaction and friendly. Later on the cheques issued by the accused petitioner were dishonoured. Thereafter the complainant filed P.C. Case No.146/2014 which was withdrawn by him on 10.02.2015 on the false assurance of the accused and a Promissory Note on the same day signed by both the parties. The accused petitioner issued three cheques of total value of Rs.15 Lacs in favour of the complainant which were dishonoured by his banker due to insufficient fund. Thereafter, after service of notice to the accused the

complainant filed a case under Section 138 of Negotiable Instrument Act, being C/1 Case No.808/2015, which was disposed of by the court of the learned Judicial Magistrate at Jamshedpur vide order dated 08.10.2015 on the point of jurisdiction and the learned court directed the complainant to file the same before the competent court having proper jurisdiction. Thereafter, the said case was taken back by the order of the learned Judicial Magistrate, 1st Class, Jamshedpur for filing the same before the court of proper jurisdiction and as such the same was filed before the learned Chief Judicial Magistrate, Saraikella, which was numbered as P.C. Case No.320/2015.

4. Mr. R.S. Mazumdar, learned senior counsel appearing for the petitioner submits that the case is arising out of Section 138 of the Negotiable Instrument Act and in view of the fact that jurisdiction was not having in the court at Jamshedpur, the learned court returned back the petition of opposite party no.2 and direction was given to opposite party no.2 to file a fresh petition before the court having the jurisdiction in the court of Saraikella. He further submits that after withdrawal of the case, the opposite party no.2 filed case before the learned court at Saraikella and the learned court, without examining the complainant on solemn affirmation and other witnesses, has directed the petitioner to lead the evidence. On this ground, he submits that the order is illegal.

5. On the other hand, Mr. Navneet Sahay, learned counsel appearing for opposite party no.2 submits that in view of Section 142 of the Negotiable Instrument Act, once the case is transferred the learned court is required to proceed further and in that view of the matter, the learned court has called upon the petitioner to lead the evidence. He further submits that there is no illegality in the impugned order.

6. The Court has perused the impugned order and finds that earlier the case was filed before the learned court at Jamshedpur which was not having the jurisdiction and therefore the learned court has returned back the petition of opposite party no.2 and directed opposite party no.2 to file a fresh petition before the learned court having the jurisdiction, which is in the court of Saraikella. It is not a case that it has been transferred from one court to another court by judicial order, however the petition was withdrawn and it was directed to file before the learned court which is having the jurisdiction and the learned court has directed to lead the evidence.

7. In *Yogendra Singh v. Savitry Pandey*; [(2014) 10 SCC 713], the Hon'ble Supreme Court has held that the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the court of sufficient cause. Paragraph 41 of the said judgment is quoted herein below:

"41. Section 142 of the NI Act prescribes the mode and so also the time within

which a complaint for an offence under Section 138 of the NI Act can be filed. A complaint made under Section 138 by the payee or the holder in due course of the cheque has to be in writing and needs to be made within one month from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. The period of one month under Section 142(b) begins from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. However, if the complainant satisfies the court that he had sufficient cause for not making a complaint within the prescribed period of one month, a complaint may be taken by the court after the prescribed period. Now, since our answer to Question (i) is in the negative, we observe that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to Question (i). As we have already held that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the court of sufficient cause. Question (ii) is answered accordingly.”

8. In view of the above facts, reasons and analysis, it appears that it is crystal clear that the complainant was required to file fresh complaint and if there was any delay, he was also having remedy to file condonation petition under the proviso and thereafter the case was required to be proceeded. In that view of the matter, the order dated 16.10.2015 passed in P.C. Case No.320/2015, pending in the court of the learned Chief Judicial Magistrate at Saraikella is, hereby, quashed.

9. It is open to opposite party no.2 to file fresh petition before the learned court. He may take recourse of proviso for condonation of delay. The learned court will proceed accordingly.

10. Accordingly, this petition is allowed and disposed of in terms of the above observations.

11. Consequently, I.A. No. 6158 of 2017 and I.A. No.2367 of 2018 stand disposed of.

12. Interim order dated 14.06.2017 stands vacated.