
(2011) 02 P&H CK 0232

In the Punjab And Haryana At Chandigarh

Case No : CRM No. 540-MA of 2010 (O and M)

Standard Corporation India Limited

APPELLANT

Vs

Kamblekar Ramesh

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(4), 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : AIR 2012 P&H 32 : (2012) 2 BC 362 : (2011) 4 RCR(Civil) 703 :
(2011) 4 RCR(Criminal) 564

Hon'ble Judges : K.C. Puri, J

Bench : Single Bench

Judgement

K.C. Puri, J.—This is an appeal directed by Standard Corporation India Limited, against the judgment dated 7.1.2010 passed by Sh. B.S. Ramana, PCS, Judicial Magistrate Ist Class, Barnala, vide which the complaint filed by the complainant-Appellant against the accused u/s 138 of the Negotiable Instruments Act (hereinafter to be referred to as "the Act"), in respect of dishonour of cheque amount of Rs. 3,45,000/- was dismissed in default.

2. Briefly stated, the complainant-Appellant filed a complaint u/s 138 of the Act with the allegation that accused issued a cheque for consideration of Rs. 3,45,000/- on 14.9.2007, which was presented for collection of the amount, and the same was dishonoured. Notice was issued and thereafter complaint was filed. The said complaint was dismissed in default on 7.1.2010 as none appeared on behalf of the complainant.

3. Learned Counsel for the Appellant has submitted that the huge amount of the company is involved and the Appellant cannot be non-suited on the ground of non-appearance.

4. Counsel for the Respondent has supported the judgment of the trial court and he has submitted that the appeal is maintainable before the Sessions Judge. However, he was not able to support the judgment on merits.

5. In the present case, the complaint was filed u/s 138 of the Act and the same was dismissed in default and the case has not been decided on merits. From the perusal of the impugned order, it is revealed that even accused has not appeared on that date and the complaint was dismissed for presence of none. It is settled law that case of the parties should not be thrown away on technicalities. A huge amount is involved. u/s 378(4) Code of Criminal Procedure leave to appeal can be granted by the High Court. Otherwise also, it is a fit case in which inherent power u/s 482 Code of Criminal Procedure should be exercised as the impugned order does not sustain the test of legal scrutiny.

6. Consequently, the impugned order dated 7.1.2010 stands set aside. The case is remanded back to the trial Court for fresh decision.

7. Parties are directed to appear before the trial Court on 1.3.2011.