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(2005) 08 MP CK 0054

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 2029 of 2005

Sudhir and Others — APPELLANT

Vs

Smt. Sushila — RESPONDENT

Date of Decision : 03-08-2005

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141
Penal Code, 1860 (IPC) — Section 120B, 120B, 420, 422, 427

Citation : (2006) 1 MPHT 42

Hon'ble Judges : Ajit Singh, J

Bench : Single Bench

Advocate : Surendra Singh and Rajkamal Chaturvedi, for the Appellant; Siddharth Datt, for the Respondent

Final Decision : Allowed

Judgement

Ajit Singh, J.—This petition u/s 482 of the Code of Criminal Procedure, 1973 by the accused persons is directed against the order dated 9-2-2005 passed by the Third Additional Sessions Judge, Damoh, whereby he has dismissed the revision confirming the order of framing of charges as passed by the Trial Court.

2. The Chief Judicial Magistrate Damoh, on the basis of complaint case filed by the respondent, has issued process against the petitioners and co-accused Rishi Dhagat for offences under Sections 138/141 of the Negotiable Instruments Act, 1881 and Sections 420, 422, 427 and 120B of the Indian Penal Code.

3. The case of the respondent is that the petitioner Nos. 1 and 2 are husband and wife whilst petitioner No. 3 and co- accused Rishi Dhagat are their sons. They are Joint Hindu Family and are owner of the shop that belonged to the father of petitioner No. 1. The petitioners are Jewellers by profession. On 11-12-2002, the petitioners had approached the respondent and took a loan of Rs. 20,00,000/- (Rupees Twenty lacs) for the betterment of their business. They executed a hand note as a security. The principal sum with interest was to be

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returned within one year. The respondent requested the petitioners on 30-1-2004 to repay the loan of Rs. 20,00,000/- (Rupees Twenty lacs) with interest of Rs. 10,00,000/- (Rupees Ten lacs). All the petitioners assured the respondent that co-accused Rishi Dhagat has a Bank account and he shall repay the loan amount by issuing two cheques. Consequently, co-accused Rishi Dhagat issued a cheque of Rs. 10,00,000/- (Rupees Ten lacs) on 30-1-2004 and Rs. 20,00,000/-(Rupees Twenty lacs) on 31-1-2004 in favour of the respondent. However, when these cheques were presented to the Bank, they were returned unpaid with an endorsement "account closed". The respondent recorded her statement and the statement of Dayachand Gangra in support of her complaint case.

4. The petitioners submit that the registration of complaint against them is illegal and constitutes an abuse of process of law. According to the petitioners, no offence is made out and, therefore, the proceedings initiated against them be quashed. The respondent, on the other hand, has supported the prosecution of the petitioners for the offences registered against them.

5. The Trial Court as well as the Revisional Court have held that in view of Section 141 of the Negotiable instruments Act, 1881 the petitioners are also vicariously liable for the act of co-accused Rishi Dhagat who had issued the cheques in question.

6. Section 141 of the Negotiable Instruments Act, 1881 reads as under :--

Offences by Companies.-- (1) If the person committing an offence u/s 138 is a company, every person who, at the time the offence was committed, was incharge of, and was responsible to the company for the conduct of the business of the company, as well as to company, shall be deemed to be guilty of the offence....

Explanation :-- For the purpose of the Section--

(A) "Company" means anybody, corporate and includes a firm or other association of individuals.

7. Admittedly, in the present case, there is absolutely no allegation in the complaint or in the statement of witnesses that the petitioners had constituted a company or a firm. All that has been alleged is that the petitioners were working together in a shop that was inherited by them from the father of petitioner No. 1. Therefore, provision of Section 141 of the Act can not make the petitioners liable for the act of co-accused Rishi Dhagat.

8. Likewise the facts, as unfolded by the respondent, do not disclose that the petitioners acted dishonestly at the time of transaction. On the contrary, they had executed a hand note as a security for the amount of loan taken by them from the respondent. It is also not alleged that on 30-1-2004 the respondent was induced by the petitioners to give any property to them. Thus, the ingredients of the offence of cheating are not attracted in the present case.

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9. There is also no allegation that the petitioners, in any manner, dishonestly or fraudulently prevented the respondent on 30-1-2004 from recovering the debt in accordance with law. The hand note executed by the petitioners as a security for the loan amount very much exists and the respondent is entitled to recover the loan amount by filing a civil suit. Thus, the ingredients of Section 422 of the India Penal Code are not attracted in the present case. The registration of offences under Sections 427 and 120B of the Indian Penal Code are also misconceived.

10. Consequently, the petitioners are discharged of the offences registered against them by the Chief Judicial Magistrate, Damoh, in Complaint Case No. 816/2004. The proceedings of case shall, however, continue against co-accused Rishi Dhagat.

The petition is allowed.

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