(1998) 08 P&H CK 0136

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 1092-M of 1994

Sukhinder Singh APPELLANT

Vs

S.R. Chaudhary RESPONDENT

Date of Decision : 21-08-1998

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (1999) 1 CivCC 303 : (1999) 1 RCR(Criminal) 279

Hon'ble Judges : K.S. Kumaran, J

Bench : Single Bench

Advocate : J.S. Narang, for the Appellant; Hemant Kumar, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Kumaran, J.—The respondent-herein field a complsint(Annrxure P-13) dated 4.7.1992 under Sections 138/142 of the Negotiable herein alleging as follows :-

2. The Complainant-company supplied to/through the accused MG Craft Paper through invoice and the accused accepted Hundies against the said invoice to clear the payments. The Hundies returned unpaid from the bank of the accused i.e. Canara Bank, Sector 17, Chandigarh, and to clear the payment of the said returned unpaid Hundies, the accused issued the following cheques payable at Canara Bank, Sector 17, Chandigarh:

Cheque No.

Amount(Rs.)

4801760 Dt. 19.2192

158152.44

4801786 Dt.24.3.92

206500.67

4801787 Dt.26.3.92

126823.55

4801788 Dt. 27.2.92

134129.75

4801789 Dt. 29.3.92

141243.58

The complainant presented the said cheques with Andhra Bank, Chandigarh, for encashment but the said cheques were received back dishonoured with the remarks ''funds insufficient''. The attempt by the complainant to get the payment of the said cheques from the accused did not bear result. The dishonouring of the cheques amounts to an offence under law. The complainant served a notice dated 9.6.1992 which was received by the accused. The notice was sent by registered post with Acknowledgement as well as under certificate of posting. In spite of such service of notice the accused has not paid the amount

3. The learned Judicial Magistrate Ist Class, Chandigarh, after the preliminary evidence, found that a prima facie case is made out against the accused u/s 138 of the Negotiable Instrument Act and ordered the accused/petitioner herein to be summoned by his order dated 2.4.1993.

4. Aggrieved by this order, the petitioner/accused the approached this Court u/s 482 Cr.P.C. for quashing the above said complaint and the summoning orderdated2.4.1993 alleging as follows:-

The petitioner is Managing Director of Gobind Agencies and Investment Company (P) Ltd. (herein after referred to as Gobind Agencies) doing trading business. While M/s Sukhana Paper Mills required the petitioner to sell MG Craft paper manufactured by it, the sister concerns of the said Gobind Agencies namely M/s Nalagarh Chemicals Pvt. Ltd. and Misriot Enterprises were supplying chemicals to Sukjiana paper Mills for manufacturing of the above said paper. Accounts were opened by all of them with Sukhana Paper Mills. While Gobind Agencies had been making the payment to M/ s Sukhana Paper Mills (herein after referred to as the Mills), the said Mills in turn had been making payments to Nalagarh Chemicals and Misriot Enterprises. The transactions started somewhere in the year 1985-86. The credit and debit balance entries were being made by all of them in their respective books of account. The accounts relating to years 1991,1992 and 1993 were not at par among them. The matter was taken up with the Mills but every time the reply was that after setting the accounts of Nalagarh Chemicals the accounts of others will be settled, but, the Mills did not settle the accounts of Nalagarh Chemicals or others.

5. The Mills at one time wanted to settle the accounts of Gobind Agencies are required that as per the books of account of the mills, Gobind Agencies should issued cheques. Gobind Agencies stated that the cheques would be issued, but

they shall be encased only subject to the re-conciliation of the accounts vis-a-vis Gobind Agencies, M/s Nalagarh Chemicals and M/s Misriot Enterprises. The Mills continued to supply M.G.Craft paper to the petitioner directly and also against the hundies. But the supply of the said paper was continuously being adjusted against the payments which were to be made by the Mills to Nalagarh Chemicals and Misriot Enterprises, and in turn Gobind Agencies was required to market the paper for the Mills. In some cases the entire proceeds were required to be transferred to the above named companies. The Mills did not reconcile its accounts with Nalagarh Chemicals and Misriot Enterprises but continued to raise their claims against Gobind Agencies for the paper supplied to them. Gobind Agencies was entitled to commission on the sales made. Gobind Agencies had been getting their hundies released by issuing cheques on various occasions, but, for the paper which was supplied directly without any hundi, the payment had to be reconciled with the payment due by the Mills to Nalagarh Chemicals and Misriot Enterprises. The petitioner time and again required the mill to submit detailed account individually so that the entire accounts could be reconciled. The Mills continued to pressurize Gobind Agencies to honour the hundies as per the due dates. Gobind Agencies had issued post-dated cheques against four hundies but the amount of the said cheques were adjusted before the dates of the said cheques by getting the payment orders.

6. Gobind Agencies vide their letter dated 13.3.1992 (annexure P-2) issued four post-dated cheques against nine hundies. It had been requested that the accounts must be reconciled vis-a-vis, the three companies. In annexure P-3 dated 30.3.1992 Gobind Agencies had stated that until the account are finally settled, the cheques issued would be deemed as cancelled and that the bankers have also been informed. On the same date the Canara Bank was also informed under Annexure P-4 that the five cheques have been issued to the Mills, that their accounts were being reconciled and as such the cheques referred to therein should not be paid till the accounts are reconciled. Gobind Agencies'' again sent a letter to the Mills Annexure P-5 dated 22.4.1992 to send separate accounts in respect of its sister concerns complete in all respects in order to reconcile the accounts. The Mill sent a vague reply (annexure P-6 dated 27.4.92) stating that the bills of the sister concern had already been credited against huge credit debit balance receivable from Gobind Agencies.

7. The Managing Director of Gobind Agencies took this matter personally and it was agreed that the details of the sister concerns shall be sent to Gobind Agencies and, if any amount is due, the payment will be made to the mills or if any payment is payable by mills to the sister concerns then the same should be adjusted against Gobind Agencies account. But the matter was not finally reconciled. The Mills continued to insist that the bills of the sister concerns have been credited against the huge credit-debit balance receivable from Gobind Agencies, but did not send the details. The Mills also sent a letter that the security deposit of Rs.4 lakhs had been adjusted against the outstanding from Gobind Agencies (Annexure P-9), and demanded the balance but there was no

mention about the presenting of the cheque to the bankers, Gobind Agencies protested under annexure P-10 dated 12.6.1992 against the adjustment of the security deposit.

8. The petitioner received a notice (annexure P-11) dated 9.6.1992 that the cheques had been presented and got dishonoured, for which a detailed a reply (annexure P12) was sent. The notice does not disclose the dates on which the cheques were presented and were got dishonoured. In the complaint (annexure P-13) dated 4.7.1992 also these details have not been mentioned.

9. The Mills have also filed a civil suit for the recovery of Rs. 18 lakhs in which, the cheques on the basis of which the complaint u/s 138 of the Negotiable Instruments Act has been filed, have also have included. An application for permission to defend the suit was filed and the Court has also given the leave of defend. Since the Civil Court has found a plausible defence the question of initiating proceedings u/s 138 of the Negotiable Instruments Act did not arise.

10. The Cheques had been presented despite the condition that if the accounts are not reconciled the cheques shall be deemed to have been cancelled by the Company. No case is made out u/s 138 of the Negotiable Instruments Act. Since details have not been furnished there is an automatic cancellation of the cheques. The bankers did not take notice of the communication dated 30.3.1992. There is no valid notice by the complainant as the complainant had no authority, nor has the notice been issued as required u/s 138 of the Negotiable Instruments Act.

11. Though opportunity was given, the respondents did not file any reply.

I heard the counsel for both the sides and perused the records. The main objection that was raised by the petitioner was that the cheques had been presented to the Bank after the petitioner had stooped payment and, therefore, no offence u/s 138 of the Negotiable Instruments Act was at all made. The details as to when the cheques were presented and as to when they were dishonoured, were not available on the record. Therefore, the respondent was directed to file an affidavit indicating these details. Accordingly, S.R.Chaudhary, the Sale Officer of the Mills has filed an affidavit giving the respective dates of presentation and the return of the cheques for which the petitioner has also filed a reply affidavit. But this question whether the cheques were presented after the payment was stopped pales into insignificance in view of the latest decision of the Hon''ble Supreme Court in M/S Modi Cements Limited Vs. Shri Kuchil Kumar Nandi, wherein it has been held as follows:-

"We see great force in the above submissions because once the cheque is issued by the drawer a presumption u/s 139 must follow and merely because the drawer issues a notice to the drawee or to the Bank for stoppage of the payment if will not preclude an action u/s 138 of the Act by the drawee or the holder of a cheque in due course....."

12. Therefore, it is clear that the contention of the petitioner that he had issued instruction to the bank to stop payment even before the cheques were presented for payment, and therefore, provisions of Section 138 are not attracted to such a case, cannot be accepted. Therefore, the main plank on the basis of which the petitioner has sought quashing of the complaint and the summoning order, breaks.

13. Of course, the petitioner has raised a plea that the mills had dealings with Gobind Agencies and its sister concerns, and the mutual accounts had not been settled between them as enumerated above. But these are matters which cannot be gone into in these proceedings and I find that there is no other valid ground for quashing either complaint or the summoning order.

14. Of course, the learned counsel for the petitioner stated that he is going to move an application under Sections 245 of the Criminal Procedure Code before the trial Court. Needless to say that it is open to the petitioner to take all the pleas that are open to him under law except, of course, the plea that the cheques had been presented after the payment was stopped and, therefore, the provisions of Section 138 of the Negotiable Instruments Act are not attracted. Therefore, the petitioner, if so advised, can move an application u/s 245 Cr.P.C. before the trial Court within three weeks from today and if and when such an application is filed, the same will be considered and disposed of by the trial Court after giving due opportunity to the concerned parties and in accordance with law within a period of six months from the date of presentation of such a petition, and during the course of the period of this six months, the personal appearance of the petitioner is exempted. If the petitioner wants his personal appearance to be exempted for any further period, he will have to make an application to the trial Court and the same will be decided by the trial Court in accordance with law.

Subject to the observations made above, this petition is dismissed.

