(2010) 04 P&H CK 0353

In the Punjab And Haryana At Chandigarh

Surinder Pal Bansal and Others — APPELLANT

Vs

Punjab Financial Corporation — RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Evidence Act, 1872 — Section 114
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2010) 04 P&H CK 0353

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Judgement

Kanwaljit Singh Ahluwalia, J.—The present petition has been filed u/s 482 Cr.P.C. seeking quashing of complaint dated 19.12.2003 (Annexure P-1) wherein petitioners are sought to be prosecuted for offence u/s 138 of the Negotiable Instruments Act (hereinafter referred to as ''the Act''). The said complaint titled as ''Punjab Financial Corporation v. Rajeev Paper Mills Limited and Ors.'' was filed in the Court of Judicial Magistrate Ist Class, Patiala. In the complaint, it is stated that petitioners have issued a cheque No. 0393878 dated 10.10.2003 for Rs. 4,27,000/-in favour of Punjab Financial Corporation. The cheque bounced on presentation. It was returned with the remarks that there was insufficient funds in the account of petitioner No. 1. Petitioners have been charged by the trial Court on 3.10.2006 for offence u/s 138 read with Section 141 of the Act. A grievance has been made in the present complaint that no statutory notice was received by the petitioners as it was sent on the wrong address and that too it was only sent on the name of Company petitioner No. 3 M/s Rajeev Paper Mills Limited. It is stated that due to crunch of financial resources, the mill was lying closed. It is pleaded in the present petition that the entire record clearly shows that the Complainant has not issued any notice to the Petitioners and the one issued on 7.11.2003 to the Firm was on the wrong address and, as such, the complainant has failed to comply with the mandatory provisions of the Act and, as such, the complaint is liable to be quashed.

2. In support of his contention, learned Counsel for the petitioners relies upon C.C. Alavi Haji Vs. Palapetty Muhammed and Another, , of which para No. 17 reads as under:

17. It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of criminal law, where there is no stipulatation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint u/s 138 of the Act, make payment of the cheque amount and submit to the court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the court along with the copy of the complaint u/s 138 of the Act, cannot obviously contend that there was no proper service of notice as required u/s 138, by ignoring statutory presumption to the contrary u/s 27 of the GC Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskaran case2 if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act.

3. The accused has also made an offer in this Court to make payment of the cheque amount on August 25, 2008, a Coordinate Bench of this Court passed the following order:

Learned Counsel for the petitioners has brought in Court a Demand Draft bearing No. 079449 dated 26.5.2008 in the sum of Rs. 4,27,000/-, drawn on HDFC Bank, in favour of respondent Punjab Financial Corporation, with the plea that it constitutes the cheque amount and, therefore, the continuation of proceedings in the complaint filed u/s 138, Negotiable Instruments Act, 1881, would not be permissible. This is particularly so because the notice u/s 138(b), Negotiable Instruments Act was not issued at the correct address, as is brought out from para-4 of the petition. Rather, no notice was issued to the petitioner.

Learned Counsel for the respondent Corporation, however, states that he has instructions from the officers of the Corporation that Rs. 1.5 crors have to be recovered and, therefore, they would pursue the complaint.

The issue, inter alia, that arises for consideration in this petition, therefore, is as to whether the claim of other amount towards the respondent can be made a subject matter of proceedings filed under the Negotiable Instruments Act in regard to a cheque for a sum of Rs. 4,27,000/-. Can these proceedings be used to settle the account beyond the cheque amount? Admitted.

Stay further proceedings.

The demand draft, referred to above, has been returned to the learned Counsel for the petitioners.

4. Mr. Arihant Jain, Advocate for the petitioners states that petitioners are still ready and willing to pay the amount of cheque along with 9% interest. In view of the offer made by counsel for the petitioners and the ratio of law laid down in C.C. Alavi Haji''s case (Supra), this Court is of the view that in case, petitioners deposit the amount of cheque along with 9% interest in the trial Court, the trial Court shall drop the proceedings. The amount of interest shall be paid from the date of issuance of cheque till the payment is made. The trial Court shall drop the proceedings only in case, payment is deposited within two months from today.

5. The petition stands disposed of in the above terms.