
(2012) 09 JH CK 0004

In the Jharkhand High Court

Case No : Criminal M.P. No. 1172 of 2011

Usha Narsaria and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 379

Citation : (2013) 2 JLJR 121

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Nilesh Kumar, for the Appellant; C. Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioners and learned counsel appearing for the State and also learned counsel appearing for the complainant. This application has been filed for quashing of the order dated 23.3.2011 passed in Complaint Case No. 663 of 2008 whereby and whereunder the then Judicial Magistrate, Ranchi took cognizance of the offence punishable u/s 379 of the Indian Penal Code against the petitioners.

2. Mr. Nilesh Kumar, learned counsel appearing for the petitioners submits that the instant case has been lodged by the complainant with ulterior purpose so as to create a defence in a case which has been lodged by the petitioners for commission of offence u/s 138 of the Negotiable Instruments Act.

3. In this regard, learned counsel appearing for the petitioners further submits that in discharge of debt, six cheques had been given by the complainant to the petitioners which were deposited in the Bank on 3.3.2008 and 26.2.2008. When all those six cheques got dishonoured, the petitioners sent legal notice to the complainant on 7.3.2008 which were received by the complainant on 10.3.2008 and 11.3.2008. In spite of receiving notice, when payment was not made, a

Complaint Case Nos. 750 of 2008 and 751 of 2008 was filed by the petitioners against the complainant. After having received the notice when the complainant became apprehensive that a case would be filed by the petitioners against him, he filed a Complaint Case No. 663 of 2008 on 19.8.2008 putting allegation that the complainant and the petitioners were in friendly terms and as such, the petitioners did visit the house of the complainant on 9.1.2008. In the room where the petitioners sat certain documents including cheque book were lying on the table. After taking refreshment, they went away. Subsequently, after three days, she came to know on 12.1.2008 that six leaves of the booklet are missing. Those cheques have been utilized by the petitioners in lodging the case u/s 138 of the Negotiable Instruments Act. The said allegation has been levelled for the ulterior purpose so as to create defence and therefore, the instant case can certainly be said to be a case of malicious prosecution.

4. As against this, learned counsel appearing for the complainant submits that cheques which had been stolen by the petitioners had never been signed by the complainant and therefore, before the court below prayer is being made to send the cheques before the handwriting expert for getting the verification of the signature be made from the admitted signature of the complainant and under this situation, the case never warrants to be quashed.

5. Having heard learned counsel appearing for the parties, it does appear that admittedly notice was sent to the petitioners when six cheques got dishonoured but when payments were not made, the complaint was lodged by the petitioners, vide Complaint Case Nos. 750 of 2008 and 751 of 2008. Before lodgment of this case when the complainant had received notice sent by the petitioners intimating therein that the cheques were dishonoured, the complainant lodged the case wherein plea has been taken that cheques have been stolen by the petitioners and were utilized by putting forged signature.

6. Under the circumstances, the compliant case seems to have been lodged with ulterior purpose in order to create defence.

7. Accordingly, the order dated 23.3.2011 taking cognizance is hereby quashed. In the result, this application stands allowed.