(2014) 07 P&H CK 0820

In the Punjab And Haryana At Chandigarh

Case No : Crl. Misc. M-38696 of 2011

Vibha Srivastava APPELLANT

Vs

Suman Chaurasia RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2014) 07 P&H CK 0820

Hon'ble Judges : Rekha Mittal, J

Bench : Single Bench

Advocate : Jagjit Beniwal, Advocate for Surinder Dagar, Advocate for the Appellant; Rakesh Dhiman, Advocate for the Respondent

Final Decision : Allowed

Judgement

Rekha Mittal, J.—The present petition u/s 482 of the Code of Criminal Procedure has been preferred for quashing Complaint No. 114 dated 27.1.2009 for offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (in short "the Act"), pending in the Court of Judicial Magistrate, Gurgaon (Annexure P-4), summoning order dated 27.1.2009 (Annexure P-5) and proceedings emanating therefrom.

2. The facts, in brief, are that the respondent initiated criminal proceedings on the allegations that Cheque bearing No. 078393 dated 21.6.2008 of Rs. 1,25,000/- and another cheque bearing No. 078394 dated 21.7.2008 of Rs. 1,26,000/- drawn on account No. 3646, Canara Bank, Old Railway Road, Gurgaon Haryana were issued for payment of share of the complainant in the firm M/s. S.S. Enterprises consisting of three partners namely Ms. Vibha Shrivastava, Ms. Suman Chaurasia and Mr. Niwas Kumar Pandey. The complainant presented the cheques for encashment but the same got dishonoured with the remarks "insufficient funds". The accused failed to make payment of the cheque amounts despite receipt of legal notice. The petitioner was summoned to face trial vide order dated 27.1.2009.

3. On may 21, 2014, the following order was passed by this Court:-

During the course of hearing, it transpired that the cheques in dispute, subject matter of the proceedings u/s 138 of the Negotiable Instruments Act, 1881 (for short "the Act") have also been signed by the complainant herself in her capacity as one of the partners of the firm. The question to be answered in the present proceedings is:-

whether the signatory of the cheques in dispute is competent to initiate proceedings u/s 138 of the Act due to dishonour of the cheques with the remarks ''insufficient fund'' ?"

Counsel for the parties pray for time to address the court on the issue.

Adjourned to 30.6.2014.

4. Counsel for the petitioner strenuously argued that as the cheques in question were also signed by the complainant in her capacity as one of the partners of the partnership firm namely M/s. S.S. Enterprises, the proceedings u/s 138 of the Act are not maintainable. It is further argued that the complainant being one of the signatory of the cheques cannot be arrayed both as a complainant as well as accused. It is further submitted that even if the complainant (respondent) has an outstanding liability qua her share in the partnership business, she can only take recourse to appropriate proceedings in law for recovering the said amount.

5. Counsel for the respondent has submitted that Niwas Kumar Pandey, the third partner in the partnership firm has already discharged his liability qua the cheques in dispute by paying an amount of Rs. 1,25,000/- to the respondent. It is further submitted that as the cheques in dispute were also signed by the other partner of the firm, the petitioner cannot escape her liability with regard to dishonour of cheques with the remarks "insufficient funds".

6. I have heard counsel for the parties and perused the case file.

7. Counsel for the respondent (complainant) has not disputed that the complainant is one of the signatories of the cheques in dispute which got disnohourned on its presentation to the bank. The sole question for adjudication is whether the complainant being one of the signatories of the cheques in dispute can maintain criminal prosecution u/s 138 of the Act. Section 138 of the Act is relevant and an extract therefrom reads as follows:-

Dishonour of cheque for insufficiency, etc., of funds in the account.--Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

8. One of the pre-requisites/essentials to attract mischief of Section 138 of the Act is that a cheque is drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for discharge of any debt or other liability. In the case at hand, the cheques in question were drawn by the complainant and Niwas Kumar Pandey for payment of money to the complainant himself and not to another person. As the cheques in question were drawn by the complainant in his own favour, he cannot maintain prosecution u/s 138 of the Act by impleading the other partners including one of the signatories as accused in the case. In this view of the matter, I find force in the contention of the petitioner that criminal proceedings initiated by the respondent are prime facie bad in the eyes of law, therefore, amounts to abuse and misuse of process of court and liable to be quashed.

9. For the aforesaid reasons, the petition is allowed, Complaint No. 114 dated 27.1.2009 (Annexure P-4), summoning order dated 27.1.2009 (Annexure P-5) and proceedings emanating therefrom are ordered to be quashed.

10. No order as to costs.

