

(2005) 09 P&H CK 0028

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 215 of 1993

Hanuman Aggarwal

APPELLANT

Vs

Satish Kumar

RESPONDENT

Date of Decision: Sept. 23, 2005

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2006) 1 RCR(Criminal) 832

Hon'ble Judges: M.M. Aggarwal, J

Bench: Single Bench

Advocate: Sanjay Mittal, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.M. Aggarwal, J.

This is revision petition filed by the complainant against the order dated 3.1.1993 passed by the Chief Judicial Magistrate, Faridabad whereby the accused-Respondents were discharged in a complaint case for the offence u/s 138 of the Negotiable Instruments Act.

2. As per the complainant, accused had purchased Jamuna Sand from the complainant and issued a cheque bearing No. G/17-410163 dated 4.6.1990 for a sum of Rs. 93,450/- of Syndicate Bank, Faridabad, which was issued by Satish Kumar as Karta of Associated builders, H.U.F. This cheque was presented on 11.10.1990 but it was returned due to insufficient funds. It was again presented on 8.11.1990 and returned on 10.11.1990 by the Bank as dishonoured. Then a legal notice dated 10.11.1990 was issued which was even replied by the Respondents-accused vide reply dated 24.11.1990. Complaint was filed 4.12.1990.

3. In the present complaint, the accused was discharged by the Chief Judicial Magistrate, Faridabad u/s 245(2) Code of Criminal Procedure vide impugned order dated 23.1.1993 holding that when the cheque was presented on 11.10.1990 and was dishonoured then it could not be presented again on 8.11.1990. Chief Judicial Magistrate, Faridabad while making this order, had observed that the cheque could not be presented again and again since it will result in repeated prosecutions and convictions on the strength of one cheque.

4. Hon"ble Supreme Court in a repeated in M/s R.S. Traders v. Rita Khanna, 1997 (2) RCR 737 (SC) had held that there was no bar in presenting the cheque again and again if it had been dishonoured for want of funds on earlier occasions. The only thing would be that there had been no successive prosecutions or convictions on the strength of one dishonoured cheque.

5. In this case, no notice had been issued after the cheque was presented first time on 11.10.1990 and returned dishonoured. A notice was issued only after the cheque was presented again on 8.11.1990 and returned dishonoured then prosecution started.

6. Under these circumstances, I find that there is merit in the petition and the same is accepted. Order dated 23.1.1993 passed by the Chief Judicial Magistrate, Faridabad is set aside. It is directed that the complaint shall be decided on merits. Since the case has become quite old one Chief Judicial Magistrate, Faridabad shall take steps to dispose of this complaint as expeditiously as possible.

7. Petitioner-complainant to put in appearance before the Chief Judicial Magistrate, Faridabad on 5.10.2005.

Petition allowed.