
(2000) 10 P&H CK 0033

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 35485 of 2000 in Cri. Miscellaneous No. 8150-M of 2000

Manjit Singh

APPELLANT

Vs

M/s Atma Singh and
Sons and Others

RESPONDENT

Date of Decision: Oct. 13, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2001) 1 CivCC 46 : (2000) 4 RCR(Criminal) 604

Hon'ble Judges: S.S. Nijjar, J

Bench: Single Bench

Advocate: R.K. Girdhar, for the Appellant; V.K. Chaudhary, for the Respondent

Final Decision: Dismissed

Judgement

S.S. Nijjar, J.

This petition is filed u/s 482, Cr.P.C. for quashing the complaint u/s 138 of the Negotiable Instruments Act (Annexure P-2), summoning order (Annexure P-3) and all the consequent proceedings arising therefrom. It is the case of the petitioner that on 15th May, 1998, the respondent filed a complaint against the petitioner u/s 138 of Negotiable Instruments Act (hereinafter referred to as the Act) in the Court of Sub Divisional Judicial Magistrate, Muktsar. The petitioner issued a cheque for Rs. 1,88,852/- in favour of the respondent. In January, 1998. The complainant presented the cheque to the Bank for collection on 18th April, 1998. The cheque was returned as it was dishonoured with the remarks "Insufficient funds." The complainant sent a legal notice to the petitioner which was received back with the report "not delivered". It is further stated in the petition that on the complaint being filed; the. Sub Divisional Judicial Magistrate recorded the preliminary evidence. Thereafter, the petitioner has been summoned to face trial. The petitioner challenges the complaint and the summoning order.

2. This petition is dated 27th January, 2000. It was, however, filed in this Court on 8th February, 2000. This Court passed the following order on 1st May, 2000

Mr. R.K. Girdhar, Advocate.

Relies upon 1995(2) CCC 536. Notice to respondents for 19.7.2000. Further proceedings stayed.

3. The complaint-respondent has filed the present application on 11th September, 2000. Prayer is made that the aforesaid order granting stay of further proceedings be vacated. Along with the application, a detailed written statement is also filed. Prayer is made in the written statement that the petition being devoid of any merit be dismissed with exemplary costs. In this written statement, it is pointed out that after the summoning order was passed, the petitioner pleaded not guilty and claimed trial. On the statement of the petitioner, the trial has commenced. Thereafter, the entire evidence on behalf of the complainant has been produced. As many as three prosecution witnesses were examined and thereafter, the evidence of the complainant was closed on 10th January, 2000. After the closure of the complaint's evidence, the statement of the petitioner Manjit Singh was recorded u/s 313, Cr.P.C. on 6th April, 2000.

4. From the above, it is abundantly clear that on the date when further proceedings were stayed by this Court, only judgment had to be pronounced by the trial Court. None of these facts are mentioned in the petition. When the facts were brought to the notice of this Court, by way of explanation, counsel for the petitioner has submitted that today only Misc. application for vacation of stay is fixed and, therefore, the main petition has not to be taken up for final hearing. Justifying the non-disclosure of the facts, the counsel for the petitioner has submitted that this Court has the power to quash the proceedings at any stage of the trial and, therefore, this is not a material non-disclosure of facts. Counsel further submits that prayer has been made in the petition not only for quashing of the complaint but also for consequential proceedings. The learned counsel makes a prayer that the hearing of this petition ought to be adjourned to some other date to enable the counsel for the petitioner to cite the relevant law. On inquiry from the Court, counsel for the petitioner stated that it is necessary to cite law to show that this

Court has the power to quash the proceedings at any stage.

5. After hearing the counsel for the petitioner, I am of the considered opinion that it is not necessary to adjourn the petition for hearing on merits as there is no dispute with the proposition that this Court has ample power u/s 482, Cr.P.C. to quash the criminal proceedings which are an abuse of the process of the Court at any stage. The Court in the present case is faced with a situation where the petitioner was granted an order of stay of further proceedings without the Court being taken into confidence about the stage of proceedings in the trial Court. The remedy u/s 482, Cr.P.C. being discretionary, it is the bounden duty of all the litigants to disclose all the relevant material to the Court, may it be

for or against the interest of the litigating party. The litigant who comes to the Court with dishonest motive or does not disclose the true facts which are necessary for the decision of the controversy, does not deserve any leniency. He can be summarily thrown out at any stage of the proceedings. In the aforesaid view of mine, I am fortified by a judgment of the Supreme Court in the case, [S.P. Chengalvaraya Naidu \(dead\) by L.Rs. Vs. Jagannath \(dead\) by L.Rs. and others,](#) wherein it was observed as under:

"Kuldip Singh, J.:- "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. Such a judgment/decree - By the First Court or by the highest Court - has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings...."

6. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the Court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence." The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Court of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

7. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the Court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the Court auction on behalf of Chunilal Sowcar. He had, on his volition, executed the registered released deed (Exhibit B-15) in favour of the Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamount to playing fraud on the Court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the Court, is bound to produce all the documents

executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party.

7. The aforesaid observations are fully applicable to the facts and circumstances of the present case. As noticed earlier, had the full facts been brought to the notice of the Court earlier, the Court may well have not used the discretion at such a late stage when the judgment was to be pronounced by the trial Court. This fact was deliberately concealed from the Court. The proceedings have been stayed since 1st May, 2000. In such circumstances, the petitioner does not deserve to be heard on merits. The petition is, therefore, dismissed on the ground that the petitioner has not come to the Court with clean hands. The stay order granted on 1st May, 2000 is hereby vacated. The main petition is dismissed with Rs. 10,000 as costs.