

(2005) 02 RAJ CK 0081

Rajasthan High Court

Case No: Criminal Revision Petition No. 697 of 2004.

Girdhari Lal

APPELLANT

Vs

State of Rajasthan and
Another

RESPONDENT

Date of Decision: Feb. 3, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 311, 313, 397, 401
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2005) 3 BC 342

Hon'ble Judges: H.R. Panwar, J

Bench: Single Bench

Advocate: M.K. Garg, for the Appellant; B.S. Sandhu and O.P. Rathi, Public Prosecutor, for the Respondent

Judgement

H.R. Panwar, J.

By this criminal revision petition under Sections 397/401, Cr.P.C., the petitioner complainant has challenged the order dated 21.9.2004 passed by Sessions Judge, Sri Ganganagar (for short "the Revisional Court" hereinafter) in a Criminal Revision No. 170/2004 filed by respondent No. 2 Sarwan Kumar against the order dated 9.7.2004 passed by Additional Chief Judicial Magistrate, 1st Class, Sri Ganganagar (for short "the Trial Court" hereinafter) in Criminal Case No. 106/2004, whereby the Trial Court dismissed the application filed by respondent No. 2 u/s 311, Cr.P.C., the Revisional Court set aside the order of the Trial Court and allowed the revision petition and directed the petitioner-complainant to appear before the Trial Court for further cross-examination as also permitted respondent No. 2 to summon the account books of the firm Nanu Ram Girdhari Lal. Aggrieved by the order of Revisional Court, the petitioner-complainant has filed the instant criminal revisional petition.

2. Briefly stated facts, relevant and necessary for disposal of the instant revisional petition are that a complaint was filed by the petitioner-complainant against respondent No. 2. u/s 138 of the Negotiable Instruments Act, 1881 (for short "the Act" hereinafter), inter alia, alleging therein that respondent No. 2 issued a cheque dated 22.12.2003 for a sum of Rs. 6,50,000/- in favour of the petitioner-complainant. On the presentation of the cheque of the Bank, it was dishonoured and returned unpaid on the ground of insufficiency of fund. A notice as envisaged u/s 138 of the Act was served on respondent No. 2. The respondent No. 2 despite service of notice, failed to pay the amount within the stipulated period and, therefore, the complaint was filed. The complainant appeared as PW1 before the Trial Court and made statement. Thereafter, accused-respondent No. 2 was examined u/s 313, Cr.P.C., made statement and produced DW1 Vijay Tinna as a defence witness.

3. An application u/s 311, Cr.P.C. was filed by respondent No. 2 stating therein that complainant has not disclosed as to when and on what date, the sum of Rs. 6,50,000/ were loaned to accused-respondent and through what documents. It was further stated that complainant is running a business of commission agency and regularly maintains the books of account. The books of account of the complainant are necessary for the decision of the case and, therefore, if there is any endorsement in the books of account regarding the amount in question, then it has to be ascertained as to whether the accused-respondent has signed or not those books of account, therefore, summoning of the books of account is necessary. It was further alleged that the complainant be recalled for further cross-examination because in the matter no cheque has been used from the cheque book.

4. The Trial Court after having considered the facts and circumstances of the case before it, dismissed the application filed by respondent No. 2 against which, the respondent No. 2 filed the revision petition before the Revisional Court. The Revisional Court allowed the revision as aforesaid.

5. I have heard learned Counsel for the parties. Perused the orders of Trial Court as well as of Revisional Court. I have carefully gone through the record of the Trial Court.

6. The accused-respondent made statement u/s 313, Cr.P.C., wherein he clearly stated that he was dealing with one Bhoj Raj as Bhoj Raj is trading in commission agent. He has also stated that the amount was paid to Bhoj Raj from his Bank account. In his statement u/s 313, Cr.P.C., respondent No. 2 has not stated he had any transaction in commission agent with the petitioner complainant. In the statement of DW 3, nothing has been said by him about the trading of the petitioner-complainant in commission agent.

7. On close scrutiny of the application, it appears that respondent No. 2 has not come with any specific case as to whether he had any transaction with the complainant-petitioner with regard to commission agency. Even in the statement u/s 313, Cr.P.C., the accused-respondent has denied having issued the cheque in question. In the

application u/s 311, Cr.P.C. merely seeking recalling the complainant-petitioner on the ground that he has not disclosed when the amount was loaned to the accused or through which of the documents. It is for the complainant to establish, if any. The complainant has made the statement and if there is any deficiency in his statement, it is not for the accused-respondent to make up such deficiency. So far as books of account of the complainant-petitioner is concerned, the accused-respondent has not set up his case that he had any dealing with the complainant's commission agency. The case as set up is against one Bhoj Raj with whom he has trading transaction as commission agency. In the circumstances, therefore, in my view, the Trial Court was justified in refusing to recall the complainant and summon the complainant's books of account. Without there being any relevancy for summoning the books of account of complainant, the accused-respondent cannot be permitted to make a roving inquiry to fish out from so called books of account of complainant petitioner if summoned. In the circumstances, therefore, in my considered opinion, the Revisional Court fell in error in setting aside the order of the Trial Court. The order of Revisional Court cannot sustain and is liable to be set aside.

8. Consequently, the revision petition is allowed, order of Revisional Court dated 21.9.2004 is set aside and the order of the Trial Court dated 9.7.2004 is restored. The record of the Trial Court be returned forthwith.