

(2006) 08 AHC CK 0264

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 2381 of 2001

Anil Kumar Jaiswal

APPELLANT

Vs

The State and Ashoka
Kumar Bhargawa

RESPONDENT

Date of Decision: Aug. 23, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 118, 138, 142

Citation: (2007) 3 BC 240

Hon'ble Judges: Barkat Ali Zaidi, J

Bench: Single Bench

Advocate: R.N. Kesari and Sharad Malviya, for the Appellant; Rameshwar Nath and A.G.A.,
for the Respondent

Final Decision: Dismissed

Judgement

Barkat Ali Zaidi, J.

This is an application for relief u/s 482 Cr.P.C.

2. In this application the grouse of the complainant is that Complaint Case No. 171 of 1998 Ashoka Kumar Bhargawa v. Anil Kumar Jaiswal u/s 138, The Negotiable Instruments Act, 1881 (here-in-after called the Act) against the applicant pending in the Court of Additional Chief Judicial Magistrate VI, Allahabad filed on basis the of 6 cheques, one of which is only in the name of complainant and the rests in the name of different payees, is not maintainable. The reasons being the complainant cannot be said to be the "payee or holder in due Course" of those 5 cheques which are in the name of different payees and the trial Court was therefore not competent to take cognizance u/s 142 of the "Act on basis of those 5 cheques. The order of the trial Magistrate passed on the application of the applicant given in this behalf, on 15.3.1999 is, therefore, not sustainable.

3. I have heard Sri Sharad Malviya Advocate for the applicant, learned A.G.A. for the State and Sri Rameshwar Nath Advocate for Opposite-party No. 2/ complainant.

4. Section 118 of the "Act" in Clause (g) of which the phrase "that holder is a holder in due course" has been defined is as follows:

(g) that holder Is a holder in due course-that the holder of a Negotiable instrument is a holder in due course.

Provided that, where the instrument has been obtained from the lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker of acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

5. The Magistrate rejected the objection of the applicant with the observation that it is only after evidence has been recorded that it will be possible for the Court to decide whether the applicant is the holder of the five cheques in question within the meaning of the "Act." The view of the Magistrate needs to be endorsed, because it is only after the full facts have been revealed by evidence, that, it will be possible to decide whether the opposite-party No. 2 is the holder within the meaning of the Act or not?

6. The applicant's counsel referred to the case of Meeta Rai (Smt.) v. Gulshan Mahajan 1999 Cri LJ 621 of Punjab and Haryana High Court, where the Court held, that the husband could not be the holder of cheque within the meaning of the "Act" because a mere letter of authority issued by the wife, was not sufficient, for that purpose. It was in view of the facts and particular circumstances of the case, that the decision was given. It cannot be applied indiscriminately, to all kind of cases, because, facts and circumstances of each case, can be different.

7. In this case the position is not precisely the same, as in the case "supra" and, therefore, it will have to be decided on the facts and circumstances of the case as revealed by evidence whether the opposite-party No. 2 is a holder of the 5 cheques in question which are in names of different payees, within the meaning of Section 118(g), and proviso (b) to Section 138 and Clause (a) of Section 142, of the Act or not?

8. The counsel for the applicant has argued that opposite party No. 2 cannot be a "payee or holder in due course" within the meaning of the "Act" is a question of law. This contention is not valid because in view of the definition of "the holder in due course" given in Sub-section (g) of Section 118 of the "Act" will have to be investigated whether the requisites given in definition have been fulfilled or not, which can only be done after the evidence has been recorded and all the circumstances have come to light.

9. There can be umpteen diverse situations and they will have to be assessed on the basis of the evidence and circumstances of the case. The contention of the

applicant's counsel that this is a pure question of law, only, is unacceptable. The Magistrate's order, must therefore, be upheld.

10. The application fails and is dismissed.