

Smt. Rizwana Begum Vs State Of U.P. & Another

Court: ALLAHABAD HIGH COURT

Date of Decision: April 7, 2017

Acts Referred: [Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 156\(3\)](#) - Saving of inherent powers of High Court - Police officers power to Investigate cognizable case

[Negotiable Instruments Act, 1881](#), [Section 138](#), [Section 142](#), [Section 138\(b\)](#) - Dishonour of cheque for insufficiency, etc., of funds in the account - Cognizance of offences - Dishonour of cheque for insufficiency, etc., of funds in the account

Hon'ble Judges: Amar Singh Chauhan

Bench: Single Bench

Advocate: Dharmendra Singhal, P.K. Singh, P.V. Singh

Judgement

1. Heard Sri Ankit Agrawal, holding brief of Sri Dharmendra Singhal, learned counsel for the applicant and learned Additional Government

Advocate for the State. None is present for opposite party no. 2, though the counter affidavit filed on behalf of opposite party no. 2 is on record.

2. The applicant, Smt. Rizwana Begum, through this application moved under Section 482 Cr.P.C., has invoked the inherent jurisdiction of this

Court with a prayer to quash the complaint registered at Complaint Case No. 302 of 2005 (Mohd. Shakir vs. Smt. Rizwana Begum), under

Section 138 of the Negotiable Instruments Act, pending before Judicial Magistrate, Court no. 7, Allahabad.

3. It is submitted by learned counsel for the applicant that brief facts which are requisite to be stated for adjudication of the application are that a

complaint under Section 138 of the Negotiable Instruments Act has been filed by the opposite party no. 2 against the applicant for alleged

dishonour of cheque No. 1550709 dated 31.7.2004 to the tune of Rs. 1,25,000/-. The alleged cheque when produced for encashment returned

unpaid with the Bank memo dated 3.8.2004 which was received by the complainant on 5.8.2004. The notice as contemplated under Section

138(b) of the Negotiable Instruments Act was given to the applicant on 19.2.2005 i.e., virtually after 6 and half months from the receipt of

dishonour memo while it should have been given within one month from the receipt of Bank memo.

4. It is further submitted that even as per amended provisions (the amendment made under Section 142 of the Negotiable Instruments Act), the

delay in filing complaint can be condoned, but if the notice has been given beyond time then there is no provision for condonation of delay in giving

notice as such cause of action is virtually lost. The complaint was filed along with application for delay condonation which was allowed, against

which criminal revision was filed by the applicant, which was dismissed by the Session Court. The application under Section 156(3) Cr.P.C., was

filed by the applicant regarding theft and misuse of cheque, rubber seal and other documents by opposite party no. 2, which was rejected by the

Magistrate, against which she also filed criminal revision which was also dismissed. Therefore, it is submitted that notice as contemplated under

Section 138 of the Negotiable Instruments Act is not given within a period of one month, and no offence can be said to be made out.

5. Per Contra, learned Additional Government Advocate contends that notice was given within time or not is a question of fact and law which can

be decided after recording the evidence. In the counter affidavit, learned counsel for the opposite party no. 2 has stated that accused-applicant

used to purchase egg and fish from the opposite party no. 2 for supplying the same to the Army mess. It is also stated that in due course of the

aforesaid business between the parties, when a sum of Rs. 1,25,000/- of the opposite party no. 2 became balance with the accused-applicant,

then the opposite party no. 2 demanded the same with the accused-applicant. The accused-applicant instead of paying the aforesaid amount in

cash to the opposite party no. 2, has opted to pay the same by means of issuing cheque. The opposite party no. 2 in good faith has accepted the

aforesaid cheque, but could not be encashed on account of insufficient fund.

6. Learned Magistrate after condoning the delay and on the basis of evidence passed the summoning order against the applicant, against which

criminal revision was filed, which was also dismissed. It is also contended that failure of the accused-applicant to make fund available in the Bank

account be construed as dishonest intention.

7. Before adverting to the claim of the parties, it is expedient to reproduce the relative aspect of Sections 138 and 142 of the Negotiable

Instruments Act:-

Section 138 : Dishonour of cheque for insufficiency, etc., of funds in the account.

138. 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 provision of this Act, be punished with imprisonment for a term

which may be extended to [two] year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of

its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheques, as the case may be, makes a demand for the payment of the said amount of

money by giving a notice in writing, to the drawer of the cheque, [within fifteen days] of the receipt of information by him from the

bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the

holder in due course of the cheque within fifteen days of the receipt of the said notice.

Section 142 : Cognizance of offences.

142. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the

payee, or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section

138 [provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies

the court that he had sufficient cause for not making a complaint within such period.]

8. In the instant case, the opposite party no. 2 along with his complaint has filed an application under Section 5 of the Limitation Act supported

with an affidavit stating all the facts and circumstances therein, on account of which he could not sent notice and file the complaint within stipulated

time provided under the law. That is why the Court below considering the reasons and circumstances shown by the opposite party no. 2 has

condoned the delay and registered the complaint. The complaint moved by the opposite party no. 2 fully disclosed the commission of the offence

under Section 138 of the Negotiable Instruments Act. Against the summoning order, the applicant filed the criminal revision which was dismissed.

The Hon"ble Apex Court in the case of Krishnan and another Vs. Krishnaveni and another [1997 (4) SCC 241] has held that though the power of

the High Court under Section 482 Cr.P.C. is very wide, however, the same must be exercised sparingly and cautiously in a case where the

petitioner is shown to have already invoked the revisional jurisdiction under Section 397 Cr.P.C. The Hon"ble Apex Court also in the case of V.

Raja Kumari Vs. P. Subbarama Naidu and another [2004 (8) SCC 774] has held that the question whether notice as required under Section 138

of the Negotiable Instruments Act, 1881 has been served to be decided during trial and the complaint ought not to be dismissed at the threshold on

the purported ground that there was no proper service of notice.

9. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482

Cr.P.C.. Only in the cases where Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order

was not correct, this power may be exercised to prevent the abuse of process or miscarriage of justice.

10. However, in view of the above discussion, I find no reason to interfere in the proceedings and, therefore, refuse to quash the proceedings in the

aforesaid case as the summoning order is justified. No illegality or delay is found in the impugned order.

11. Accordingly, the application is rejected.

12. Interim order, if any, stands vacated.

13. Office is directed to communicate this order for necessary compliance.