
(2002) 09 JH CK 0006

Jharkhand High Court

Case No: Criminal M.P. No. 319 of 2002

Devender Singh

APPELLANT

Vs

State of Jharkhand and
Another

RESPONDENT

Date of Decision: Sept. 18, 2002

Acts Referred:

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

Citation: (2003) 1 BC 484

Hon'ble Judges: D.N. Prasad, J

Bench: Single Bench

Advocate: Anubha Rawat Choudhary and Vikash Mittal, for the Appellant; Additional Public Prosecutor and Sambhu Nath Sharma, For Opp. Party No. 2, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.N. Prasad, J.

This application has been filed u/s 482 of the Code of Criminal Procedure (the Code) for quashing the order dated

7.2.2002 passed by the Sub-Divisional Judicial Magistrate, Jamshedpur, C/1 Case No. 829 of 2001 whereby the learned Magistrate took

cognizance of the offence u/s 138 of the Negotiable Instruments Act, 1881 (the Act) and also for quashing of all further criminal proceedings in the

aforesaid case.

2. The case of the prosecution in brief is that opposite party No. 2/complainant filed a complaint case alleging, inter alia, that the petitioner and the

complainant were well known and the petitioner had approached the complainant to give a sum of Rs. 40,000/- as he was in urgent need of

money. On his request, the petitioner was paid Rs. 40,000/- and, accordingly, a cheque of Rs. 40,000/- bearing Cheque No. ""481903

226015005"" of the Canara Bank, Hi-Tech. Agricultural Finance Branch, Lucknow dated 20.4.2001 was issued by the petitioner to the

complainant. The complainant informed the accused/petitioner regarding the dishonouring of the cheque after some time. The complainant again

presented the cheque but it was again dishonoured with a return memo dated 18.6.2001 issued by the Canara Bank with a note that the payment

has been stopped by the drawer/accused-petitioner. The complainant issued a notice dated 29.6.2001 to which the petitioner demanded payment

of Rs. 40,000/-but the petitioner did not pay the amount and thereafter the complainant filed the instant complaint case.

3. The complainant has been examined on solemn affirmation and one another witness has also supported the case and after finding prima facie

case, the learned Magistrate took cognizance of the offence by the order impugned, hence this application.

4. Counter-affidavit has been filed on behalf of opposite party No. 2/complainant denying the contention of the petitioner/accused that the

petitioner/accused was having sufficient credit balance in his account on 28.5.2001. It is alleged that the cheque issued by the petitioner was

bounded because of no balance lying with the Bank to the credit of the petitioner, as a result of which, there was an endorsement of the Bank as

stop payment"" issued on 18.6.2001. The Court below after finding prima facie case took cognizance of the offence rightly. It is also claimed that

the cheque was dishonoured on 30.4.2001 to which the petitioner was intimated by the Advocate of the complainant through notice in writing on

8.5.2001 and second time the cheque was dishonoured on 28.5.2001 when the Bank return memo was issued on 18.6.2001 and thereafter again

notice was issued on 29.6.2001, as required under Clause (b) of Section 138 of the Act and, as such, the petition is fit to be dismissed.

5. Mrs. Anubha Rawat Choudhary, learned Counsel appearing on behalf of the petitioner submitted that the learned Magistrate committed error in

taking cognizance without applying his judicial mind and the complainant has not mentioned about the first notice dated 8.5.2001 and, as such, the

complainant knowingly suppressed the facts and, therefore, dishonour of cheque on each representation does not give rise to a fresh cause of

action and, as such, this complaint petition is barred by limitation. The learned Counsel relied upon the case of *Sadanandan Bhadran Vs.*

Madhavan Sunil Kumar,

6. On the other hand, the learned Counsel appearing on behalf of opposite party No. 2 contended before me that the Court below has rightly took

cognizance in the matter as admittedly the petitioner/accused has issued a cheque of Rs. 40,000/- in connection with the debt and that cheque was

dishonoured. It is further submitted that the complainant also informed the accused regarding dishonouring of the cheque and the accused had

requested the complainant to present the cheque after some time and thereafter again the complainant to present the cheque after some time and

thereafter again the complainant had presented the said cheque which was again dishonoured by an endorsement "stop payment". It is also

submitted that the case of *Sadanandan Bhadran (supra)* was already considered by the Supreme Court in The case of *M/s. Dalmia Cement*

(Bharat) Ltd. Vs. *M/s. Galaxy Traders and Agencies Ltd.*, in which it was held that to constitute an offence u/s 138 of the Act, the Complainant

is obliged to prove its ingredients which include the receipt of notice by the accused under Clause (b) of Section 138 of the Act. It is not the giving

of notice which makes the offence but it is the receipt of the notice by the drawer which gives the cause of action to the complainant to file the

complaint within the statutory period and the petitioner/accused admitted that the complainant had approached him and the petitioner had

requested not to present the cheque for some time indicating clearly that the petitioner/accused was informed about dishonouring of the cheque

and on the request of the petitioner, again that cheque was presented which was dishonoured on 28.5.2001 and, therefore, the filing of this

complaint case within the statutory period from the second notice is not barred by limitation.

7. Perused the record. Obviously the petitioner/accused had issued a cheque for Rs. 40,000/- on 20.4.2001 which was presented to the Bank but

it was dishonoured on 30.4.2001. It has specifically been mentioned in paragraph 4 of the complainant petition that the complainant had informed

the accused regarding dishonouring of the cheque who requested the complainant to present the cheque after some time which goes to prove

clearly that the complainant presented the cheque second time in the Bank because of the request made by the petitioner himself, the petitioner also

claimed that he had not received the first notice dated 8.5.2001. The complainant as well as one witness was examined during inquiry u/s 202 of

the Code and after finding prima facie case, the learned Magistrate took cognizance of the offence.

8. The supreme Court in the case of M/s. Dalmia Cement (supra) considered the decision of Sadanandan Bhadrans (supra) and held that:

Clause (a) of the proviso to Section 138 did not put any embargo upon the payee to successively present a dishonoured cheque during the period

of its validity. On each presentation of the cheque and its dishonour a fresh right and not cause of action accrues. The payee or holder of the

cheque may, therefore, without taking pre-emptory action in exercise of his right under Clause (b) of Section 138 of the Act, go on presenting the

cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But once a notice under Clause (b) of

Section 138 of the Act is "received" by the drawer of the cheque, the payee or the holder of the cheque forfeits his right to again present the

cheque as cause of action has accrued when there was failure to pay the amount within the prescribed period and the period of limitation starts to

run which cannot be stopped on any account. This Court emphasised that needless to say the period of one month from filing the complaint will be

reckoned from the date immediately falling the day on which the period of 15 days from the date of the receipt of the notice by the drawer

expires.

9. The petitioner/accused has denied about the receipt of the first notice dated 8.5.2001 issued by this opposite party No. 2 but at the same time

the petitioner admitted that he was informed by opposite party No. 2 regarding dishonouring the cheque as stated at the first instance in paragraph

4 of the complaint petition. So all these matters relating to facts are for consideration before the Trial Court on the basis of the evidence collected.

Admittedly the petitioner received a sum of Rs. 40,000/- and in lieu thereof, the cheque of Rs. 40,000/- was issued by the petitioner. In such

circumstance, the Court has to presume that the dishonoured cheque was issued for debt and liability which can be rebutted by the

accused/petitioner by leading evidence only. Burden of proving for non-existence of any debt or liability is on the accused which can be discharged

at the trial. It appears that the cheque was dishonoured on account of drawer's "stop payment" and the accused is to show that dishonoured was

not due to insufficient of funds. Admittedly the petitioner did not make any payment so far. The Court below passed the order impugned after

finding prima facie case which does not require for interference.

10. For the aforementioned reasons, I do not see any infirmity with the conclusion arrived at by the learned Magistrate requiring interference by this

Court.

11. In the result, I do not find any merit in this application which is accordingly dismissed.