(2010) 08 DEL CK 0252

Delhi High Court

Case No: Criminal M.C. 429 of 2009

Gurpreet Singh		APPELLANT
	Vs	
Ranbaxy Laboratories Ltd. and Another		RESPONDENT

Date of Decision: Aug. 2, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 251, 263, 263(2), 482
- Negotiable Instruments Act, 1881 (NI) - Section 138, 145

Hon'ble Judges: S.N. Dhingra, J

Bench: Single Bench

Advocate: Ashish Upadhyay, for the Appellant; Deepak K., for the Respondent

Final Decision: Dismissed

Judgement

Shiv Narayan Dhingra, J.
By the present petition u/s 482 Cr.P.C. the petitioner sought quashing of an order dated 17th March, 2008 passed by learned Sessions Judge in a revision whereby he allowed revision of respondent herein against the order of learned Metropolitan Magistrate dated 22nd May, 2007 dismissing a complaint u/s 138 of Negotiable Instruments Act.

2. The main ground of attack made by the petitioner against the order of learned Sessions Judge is that the order of dismissal of complaint passed by learned MM amounted to acquittal of the petitioner and no revision was maintainable against the order of acquittal and only an appeal was maintainable.

3. I have perused the orders passed by learned MM after summoning of accused. A perusal of these orders would show that the learned MM proceeded with the case as if it was a summon trial case and after issuing notice asked the complainant to again lead evidence despite the fact that the evidence by way of affidavit of complainant was already on record. The Legislature has specifically made offence

u/s 138 of the Negotiable Instruments Act as a summary trial and once the accused is summoned, he has to state his plea and state his defence in terms of Section 263(g) read with Section 251 Cr.P.C. The summary trial proceedings can be converted to summon trial case only under two circumstances, firstly when the Court comes to a conclusion that the sentence of one year would be inadequate and it was a case where sentence of more than one year may be required to be awarded, secondly when the MM is of the view for some reason (to be recorded) that the case should be tried as a summon trial. In the present case none of the two things happened. The learned MM did not pass an order as to why the case was to be converted to a summon trial. The learned MM was bound to follow procedure of summary trial and was bound to treat the affidavit and evidence already filed by the complainant on record as the evidence sufficient to convict the accused unless accused had pleaded a tenable defence and accused was prepared to prove the defence. The learned MM therefore went wrong in posting the case repeatedly for complainant''s evidence, without asking the accused/petitioner as to what was the his defence. Since the learned trial court committed a grave error in treating this case as a summon trial case, the order of learned MM suffered from jurisdictional error and was liable to be set aside in revision. The learned Sessions Judge, though for different reasons, had allowed the revision, I consider that this Court need not interfere into the order of learned Sessions Judge. Directions are hereby given to learned MM to treat the present case as a summary trial case and the complainant''s evidence, already given during inquiry at pre-summoning stage should be treated as evidence at post-summoning stage in terms of Section 145 of Negotiable Instruments Act and in terms of Section 263(2) of Cr.P.C (summary trial proceedings) and the petitioner should be asked to lead evidence in defence. (See judgment titled Rajesh Aggarwal v. State and Anr. Crl.M.C. 1996 of 2010 decided on 28th July, 2010).

4. I find no merits in this petition. The petition is hereby dismissed with no orders to costs.