

Sanjeev Kashyap Vs Sachin Mohan

Court: Uttarakhand High Court

Date of Decision: Sept. 2, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 200
Negotiable Instruments Act, 1881 (NI) â€” Section 138, 145

Hon'ble Judges: Servesh Kumar Gupta, J

Bench: Single Bench

Judgement

Servesh Kumar Gupta, J.

By way of this Criminal Miscellaneous Application, prayer has been made to quash the cognizance order dated

20.1.2007, passed by the Judicial Magistrate, Hardwar in Complaint Case No. 612/2007 (Old No. 2507/2006), Sachin Mohan v. Sanjeev

Kashyap, u/s 138 of the Negotiable Instruments Act, 1881.

2. Having heard learned Counsel for the parties, it appears that Sachin Mohan filed a complaint against the applicant Sanjeev Kashyap for default

of payment of a cheque worth rupees one lakh. The said cheque was dishonoured by the bank because of lack of sufficient funds in the account of

the drawer of the cheque. Respondent Sachin Mohan gave a notice to the applicant as required u/s 138(b) of the Negotiable Instruments Act.

When the payment was not made within the stipulated period, he filed the said complainant on 10.11.2006.

3. At the time of filing of the aforesaid complaint, the complainant simultaneously filed an affidavit u/s 200 Code of Criminal Procedure

corroborating the facts that were averred in the complaint. Besides the cheque, the memo of return of the said cheque unpaid by the bank was also

filed on the same day u/s 200 Code of Criminal Procedure. On 20.1.2007, after hearing the arguments of the complainant and after having gone

through the affidavit and other evidence stated above, the learned Magistrate passed the impugned cognizance order.

4. The applicant Sanjeev Kashyap has challenged the validity of the affidavit, which was filed by the complainant u/s 200 Code of Criminal

Procedure at the time of filing the complaint itself. This affidavit was drafted and signed by the deponent Sachin Mohan on 10.11.2006. But

strangely enough, it was sworn in on 9.11.2006, as is written at the end of the averments made in the said affidavit. Thus, the affidavit was sworn in

a day before filing of the said complaint. Though the provisions contained u/s 145 of the Negotiable Instruments Act permit the complainant to give

his evidence by way of affidavit, but the same do not allow the complainant/deponent to swear the affidavit one day prior to its drafting and also

putting in his signatures therein. Such a document is not at all admissible in evidence u/s 200 Code of Criminal Procedure, rather it indicates

towards the malpractice complete unmindfulness of the Oath Commissioner, who has put in his signatures in the said affidavit verifying the swearing

of the deponent Sachin Mohan. Therefore, the impugned cognizance order, which is based on the said affidavit, is vitiated and cannot be allowed

to sustain.

5. For the reasons recorded above, the cognizance order dated 20.1.2007 is hereby quashed. However, the complaint filed by Sachin Mohan

against Sanjeev Kashyap may proceed further if the complainant examines himself afresh u/s 200 Code of Criminal Procedure. The petition is

disposed of accordingly.

6. Registry is directed to inform the court concerned accordingly.