



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.346 of 2011
Decided on: 03.04.2023

Dolma Devi

...Appellant.

Versus

Roshan Lal

... Respondent.

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting? Yes

For the appellant: Mr. Vir Bahadur Verma, Advocate.

For the respondent: Mr. Varun Rana, Advocate.

Ajay Mohan Goel, Judge (Oral)

By way of this appeal, the appellant has challenged the judgment passed by the Court of learned Sub-Divisional Judicial Magistrate, Chachiot at Gohar, District Mandi, H.P. in case bearing Complaint No.208-1/2005, titled as Dolma Devi Versus Roshan Lal, in terms whereof, a complaint filed under Section 138 of the Negotiable Instruments Act by the present appellant was dismissed by the learned Court below.

2. Brief facts necessary for the adjudication of the present appeal are that the appellant/complainant (hereinafter to be referred as the 'complainant'), filed a complaint filed against the respondent under Section 138 of the Negotiable Instruments Act, on the ground that she had filed objections before the Land Acquisition Officer, Bilaspur against an award which was made in favour of the accused.

Whether reporters of the local papers may be allowed to see the judgment?

During said proceedings, the parties arrived at a compromise and in terms of the compromise, a cheque for an amount of Rs.3,00,000/- was issued by the accused to the complainant, i.e. cheque No.0012360, drawn upon H.P. State Cooperative Bank, Branch Beri, at Bilaspur, H.P. The cheque was submitted by the complainant in Punjab National Bank, Jachh where she was having her account, on 07.03.2005, which was returned back on 24.03.2005 with remarks that the cheque was post dated. This was followed by issuance of notice as provided under Negotiable Instruments Act, but as even thereafter, the amount was not paid by the accused to the complainant, hence, the complaint.

3. The complaint has been rejected by learned Trial Court on two counts. The first count, on which the complaint has been rejected by the learned Trial Court is that the notice issued after the cheque was returned back as dishonoured, was no notice as contemplated under the provisions of Negotiable Instruments Act, as no demand of money was made therein. The second count, on which the complaint has been dismissed by learned Court below is that the cheque in issue was presented before the drawee bank after the due date, i.e. six months as from the date the cheque was issued.

4. Feeling aggrieved, the appellant has filed the present appeal.

5. Learned counsel for the appellant has argued that while

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dismissing the appeal, a hyper technical view has been taken by the learned Trial Court as it erred in not appreciating that in the notice which was issued by the appellant after dishonouring of the cheque, all the ingredients of the provisions of the Negotiable Instruments Act were complied with and simply because one line was not written therein qua demand of money this does not mean that the same did not amount to statutory compliance of the provisions of the Negotiable Instruments Act. He has further submitted that the notice that was issued was not a general notice but it was in terms of the Negotiable Instruments Act and issued after the cheque in issue stood dishonoured, but this extremely important aspect of the matter has been ignored by learned Trial Court, which adopted a hyper technical view in the matter. Learned counsel further submitted that as the cheque was issued on 14.09.2004 and the same was presented by the appellant with her bank within six months as from the date its issuance, therefore, the appellant had done whatever she was supposed to do and if her bank presented the cheque to the payee bank after the period of six months as from the date of issuance of the cheque, then she could not have been made to suffer for this lapse, if any, on behalf of her bank. Accordingly, he submitted that the present appeal be allowed and the judgment passed by learned Court below be set aside.

6. The appeal has been opposed by learned counsel for the

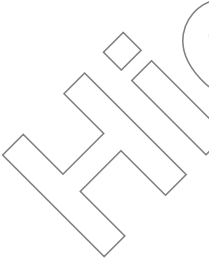
respondent, *inter alia*, on the ground that there is no infirmity in the judgment passed by learned Trial Court, because the law as stands settled by Hon'ble Supreme Court of India is very very clear that until and unless, the notice envisaged under the provisions of Negotiable Instruments Act is inconsonance with the statutory provisions, the same cannot be said to be a notice in the eyes of law and similarly, it is not the date when the holder of a cheque presents the cheque with his or her own bank for its being honoured that matters but it is the date on which the cheque is presented to the payee bank which determines as to whether the cheque has been furnished within the validity of the cheque or not. Accordingly, he submitted that the present appeal being devoid of merit be dismissed.

7. I have heard learned counsel for the parties and have also carefully gone through the judgment passed by learned Court below.

8. The reasons, on account of which the complaint of the present appellant has been dismissed, already stands spelled out by me in the above part of the judgment. It is not in dispute that the cheque in issue is dated 14.09.2004. The same was drawn upon H.P. State Cooperative Bank, branch Beri, District Bilaspur, H.P. This cheque though was presented by the appellant with her bank on 07.03.2005, yet the same was received by the payee bank, i.e.

H.P. State Cooperative Bank, branch Beri, District Bilaspur, H.P. on 15.03.2005, i.e. after six months from the date of issuance of the cheque which lapsed on 13.03.2004. ◇

9. Hon'ble Supreme Court in *Shri Ishwar Alloy Steels Ltd. Versus Jayaswals Neco LTD., (2003) 3 Supreme Court Cases 609*, has been pleased to hold that the law mandates a cheque to be presented at the bank on which it is drawn if the drawer is to be held criminally liable necessarily within six months as from the date of its issuance (this judgment relates to the period when the validity of cheque used to be for a period of six months). In Para-10 of said judgment, Hon'ble Supreme Court has been pleased to hold as under:-



“It, however, does not mean that the cheque is always to be presented to the drawer’s bank on which the cheque is issued. The payee of the cheque has the option to present the cheque in any bank including the collecting bank where he has his account but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the drawee or payee bank on which the cheque is drawn within the period of six months from the date on which it is shown to have been issued. In other words a cheque issued by (A) in favour of (B) drawn in a bank named (C) where the drawer has an account can be presented by the payee to the bank upon which it is drawn i.e. (C) bank within a period of six months or present it to any other bank for

collection of the cheque amount provided such other bank including the collecting bank presents the cheque for collection to the (C) bank. The non presentation of the cheque to the drawee-bank within the period specified in the Section would absolve the person issuing the cheque of his criminal liability under Section 138 of the Act, who shall otherwise may be liable to pay the cheque amount to the payee in a civil action initiated under the law. A combined reading of Sections 2, 72 and 138 of the Act would leave no doubt in our mind that the law mandates the cheque to be presented at the bank on which it is drawn if the drawer is to be held criminally liable. Such presentation is necessarily to be made within six months at the bank on which the cheque is drawn, whether presented personally or through another bank, namely, the collecting bank of the payee.”

10. Therefore, from the reading of the above para of the judgment of Hon'ble Supreme Court, this Court observes that there is no infirmity in the findings returned by learned Trial Court that the cheque in issue in fact was presented before the payee bank after the cheque had expired as it is an admitted fact that the cheque was presented with the payee bank, may be by the bank of present appellant, after a period of six months as from the date of issuance of the cheque.

11. The notice which was issued by the appellant to the respondent after the dishonor of the cheque is on record as

Ext.CW1/D, dated 05.04.2005. Relevant paras of this notice are being reproduced hereinbelow:-

“3. That my client presented the aforesaid cheque through P.N.B. Jachh thrice to your bank, i.e. H.P. State Co-Operative Bank Branch Beri at Bilaspur on dated 7-3-2005 which has been returned on dated 24-3-05 with the remarks of serial no.13 of Memorandum as such you willfully and deliberately assured my client for payment knowingly that you have insufficient fund in your account as such your aforesaid acts fall under the ambit of section 138 of the Negotiable Instrument Act.

You are, therefore, intimated through this legal notice that you have committed an offence under section 138 of the Negotiable Instrument Act for which you should be penalized with cost and consequences in that event you shall be responsible for all cost and consequences arising out of the litigation.”

12. Proviso (b) to Section 138 of the Negotiable Instruments Act, reads as under:-

“(b) the payee or the holder in due course of the cheque, 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 thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid.”

13. The words that are used in the above mentioned proviso are “makes a demand for the payment of money by giving a notice in

writing". The relevant paras of the notice which was issued by the appellant to the respondent after the dishonouring of the cheque have already been quoted by me hereinabove. Perusal thereof demonstrates that though in the said notice there was a mention of the dishonouring of the cheque, but in terms of the language of the proviso referred to hereinabove, no demand for the payment of the said amount of money was raised in the said notice by the appellant.

14. Hon'ble Supreme Court in *K.R. Indira Versus Dr. G. Adinarayana, (2003) 8 Supreme Court Cases 300*, has been pleased to hold that though no formal notice is prescribed in Section 138 of the Negotiable Instruments, the statutory provisions indicate in unmistakable terms as to what should be clearly indicated in the notice and what manner of demand it should make. Hon'ble Supreme Court was further held that what is necessary is making of a demand for the amount covered by the bounced cheque.

15. Coming back to the facts of the present case, as in the notice which was issued after the bouncing of the cheque, there was no demand of the amount of the bounced cheque, in this background, the findings returned by learned Trial Court that the notice was no notice in the eyes of law, as is envisaged under the provisions of the Negotiable Instruments Act, were also correct findings.

16. Accordingly in view of the above discussion, as this

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Court does not finds any merit in the present appeal, the same is dismissed, so also the pending miscellaneous applications, if any. Interim order, if any, stands vacated.

(Ajay Mohan Goel)
Judge

April 03, 2023
(Rishi)

