

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: HON'BLE MR. S. C. SHARMA, J

MISC. CRIMINAL CASE No. 9128 / 2012

MRS. ANITA MISHRA W/O RAJENDRA MISHRA

Vs.

ARUN KUMAR
AND TWO OTHERS

* * * * *

ORDER
(09/09/2015)

The petitioner before this Court has filed this present petition u/S. 482 of the Code of Criminal Procedure, 1973, being aggrieved by order dt. 24/8/2012 passed by the Additional District Judge, Narsingarh, Distt. Rajgarh in Cr. Rev. No. 195 / 2012, by which the revisional Court has dismissed the revision filed by the petitioner against order dated 29/7/2011.

Facts of the case reveal that a complaint was preferred u/S. 138 of the Negotiable Instruments Act by respondent No.2 against the present petitioner on 2/7/2007. The Judicial Magistrate First Class, Narsingarh sentenced the petitioner for six months imprisonment and fine of Rs.3,30,000/- was imposed against which an appeal was preferred ie., No. 231/2007 and a settlement took place between the parties in Lok Adalat on 25/7/2008. Both the parties agreed to

withdraw the pending litigations and in terms of the settlement a condition of payment of Rs.3,51,750/- by cheque dt. 31/12/2008 of State Bank of India, Shujalpur Branch was given to the respondents. The present petitioner was signatory to the aforesaid cheque. Later on the cheque was presented for encashment on 2/2/2009 and the same was returned with an endorsement "Please Contact Issuing Person". As the cheque was dishonoured, second complaint was filed and a case was registered ie., Cr. Case No. 547/2009 for offence u/S. 138 of the Negotiable Instruments Act. On 7/8/2011 (29/7/2011) an order was passed taking cognizance of the matter against which appeal was preferred and the appeal has been dismissed.

Learned counsel for the petitioner has placed reliance upon the judgment delivered by the apex Court in the case of Lalit Kumar Sharma and another Vs. State of Uttar Pradesh and another reported in **(2008) 5 SCC 638** and his contention is that as the second cheque was given in lieu of the compromise and as the complainant was already punished in the earlier case, the question of taking cognizance at a second complaint does not arise in the light of the judgment delivered by the apex Court.

On the other hand, learned counsel for the respondent has made an attempt to distinguish the judgment delivered by the apex Court and his contention is that the respondents have not received the amount and as per the Lok Adalat

settlement a cheque was given and the same was dishonoured and, therefore, as there was a liability which is a legally enforceable debt, the second complaint is maintainable.

Heard learned counsel for the parties at length and perused the record.

In the present case, it is an undisputed fact that in respect of earlier cheque issued by the present applicant a criminal case was preferred u/S. 138 of the Negotiable Instruments Act and a judgment of conviction was also delivered by the Judicial Magistrate First Class, Narsingarh. Fine was also imposed. An appeal was preferred against the judgment of conviction ie., No. 231/2007 and both the parties in Lok Adalat, on 25/7/2000, have agreed to withdraw pending litigation. A cheque was also given in the light of the settlement of Rs.3,51,750/- and the same has been dishonoured. The second complaint has been preferred on account of dishonour of the second cheque.

The apex Court in the case of Lalit Kumar Sharma (supra), in paragraph 11 to 17 has held as under :

11. Section 138 of the Act reads, thus:

"138 - Dishonour of cheque for insufficiency, etc., of funds in the account 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 provisions of this Act, be punished with imprisonment for a term which may be extended to two years, 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 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; 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.

Explanation.-- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

12. It is not disputed that in respect of the first cheques dated 30.11.1999 and 10.12.1999, the appellants herein were not proceeded against. It is furthermore not in dispute that although a purported compromise was entered into by and between Ashish Narula, Manish Arora, on the one hand, and the complainant, on the other, as a result whereof the said cheque for a sum of Rs. 5,02,050/- was issued and bounced; the complaint petition had not been withdrawn. By a judgment and order 16.01.2006, Ashish Narula and Manish Arora had been found guilty for commission of the offence under Section 138 of the Act. They were sentenced to undergo one year's R.I. with fine of Rs. 20,000/- each and in default thereof to undergo three months' simple imprisonment. They were also directed to make payment of rupees nine lakhs as compensation to the complainant within a period of one month of the orders under Section 357 of the Code of Criminal Procedure.

13. The fact that Manish Arora issued the second cheque in terms of the settlement between the parties is not in dispute. It appears from the complaint petition itself, the requisite averments made therefor were as under:

"5. That after getting their bail from the court the accused No. 2 to 6 approached and requested the complainant to take fresh cheques for full amount and withdraw the complaint and also felt sorry for the said dishonour of the cheque."

14. The learned Judicial Magistrate also in his order dated 1.10.2002 noticed:

"It has been stated on behalf of the accused persons that by settlement it was found that the party involved in the dealing would be responsible. Thus, prayer has been made on behalf of the accused persons that the aforementioned all the three accused

persons may be discharged from this case.

The aforesaid contentions have been opposed on behalf of the complainant and it has been stated that all these three persons were party in the whole dealing and their liability is just like other accused persons.

It is clear from the perusal of the complaint that total 6 accused persons have been made parties in this matter by the complainant and in her statement U/s 200 of Cr.P.C., complainant has clearly stated that Manish Arora, Ashish Narula and L.K. Sharma and Bela Narula and wife of L.K. Sharma were directors of the company. All the five accused persons demanded loan of Rs. Five Lakh Two Hundred Fifty from the complainant for some time and promised her to return the said money soon. All the five persons have been equally involved in the dealing of giving and receiving the cheque."

15. Evidently, therefore, the second cheque was issued in terms of the compromise. It did not create a new liability. As the compromise did not fructify, the same cannot be said to have been issued towards payment of debt.

16. Ingredients of Section 138 of the Act are as under:

- (i) that there is a legally enforceable debt;
- (ii) that the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which presupposes a legally enforceable debt; and
- (iii) that the cheque so issued had been returned due to insufficiency of funds.

17. Thus, the second cheque was issued by Manish Arora for the purpose of arriving at a settlement. The said cheque was not issued in discharge of the debt or liability of the Company of which the appellants were said to be the directors. There was only one transaction between Shri Ashish Narula, Shri Manish Arora, Directors of the Company and the complainant. They have already been punished. Thus, the question of entertaining the second complaint did not arise. It was, in our opinion, wholly misconceived. The appeal, therefore, in our opinion, must be allowed. It is directed accordingly. Respondent shall bear the costs of the appellants. Counsel's fee assessed at Rs. 25,000/-.

The apex Court in almost similar circumstances has held that the question of entertaining a second complaint, does not arise as the cheque was not issued in discharge of debt or liability of the Company. It was issued on account of

a settlement arrived at between the parties.

In the light of the aforesaid judgment, this Court is of the considered opinion that the impugned order passed by the learned Magistrate dt. 29/7/2011 and the order passed by the Additional District Judge dt. 24/8/2012 in Cr. Case No.195/2012 are hereby set aside and the complaint is quashed. However, the respondents shall be free to take appropriate action for enforcement of the settlement arrived at between the parties in Lok Adalat and are also at liberty to file a recovery suit.

(S. C. SHARMA)
J U D G E

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