

Criminal Revision
Present: **The Hon'ble Justice Ashim Kumar Roy**
Judgment on: 10.03.2010
C.R.R. No. 4566 of 2009

Arbind Kumar Sinha
versus
Smt. Mahua Sengupta

Point:

QUASHING: Allegation that cheque was not issued in discharge of any legally enforceable debt or liability and the same was forcibly taken away whether can be considered and proceedings can be quashed -Code of Criminal Procedure, S. 482- Negotiable Instrument Act, 1881 S 138

Fact: The petitioner by filing the instant application prayed for quashing of a proceeding on the ground that the complainant has not been able to prove that there was any legally enforceable debt or liability in discharge of which the cheque has been issued.

Held:

The contention the cheque was not issued in discharge of any legally enforceable debt or liability and the same was forcibly taken away from the petitioner and there was no witness of voluntary handing over the cheque are the matters which can only be gone into during the trial not at this stage when the petitioner has approached this Court for quashing of the complaint. (Paragraph – 5)

For Petitioner : Mr. Pradip Kumar Roy

The Court: Invoking Section 482 of the Code of Criminal Procedure, the petitioner has moved this Court for quashing of a proceeding under Section 138 of the Negotiable Instruments Act.

2. Heard Mr. Pradip Kumar Roy, learned advocate appearing for the petitioner.
Considered the materials on record.

3. In support of prayer for quashing. Mr. Roy urged the following points;
- (a) The impugned complaint was filed beyond the prescribed period of limitation.
 - (b) The complaint has been filed suppressing the material facts.
 - (c) In the petition of complaint it was not mentioned on which date the accused persons received the notice, nor there was any mention how payment was made and the name of the witnesses in whose presence the transaction was held.
 - (d) The complainant has not been able to prove that there was any legally enforceable debt or liability in discharge of which the cheque has been issued.
 - (e) The petitioner has no liability to make payment against the cheque in question.
 - (f) The cheque was taken forcibly from the petitioner.
 - (g) No document has been filed along with the petition of complaint to show that there was any legally enforceable debt.
4. So far as the first contention of the petitioner that the complaint was filed after the expiry of prescribed period of limitation upon examination of the materials on record, I found that same is absolutely incorrect. In this case the complainant got the intimation about the dishonour of cheque on 31st of December, 2008 and demand notice was sent on 15th of January, 2009, i.e. within 30 days from the date of receipt of intimation about such dishonour. It further appears the accused persons by his letter dated 23rd January, 2009 gave a reply against the said demand notice, but did not make any payment within 15 days from the date of receipt of such demand notice. Thereafter, the complaint was filed on 2nd March, 2009. It may be noted on February 28, 2009 and on March

1, 2009 both were holidays being Saturday and Sunday, thus complaint has been filed within the prescribed period of limitation.

5. The rest of the submissions made on behalf of the petitioner are pure question of facts and cannot be gone into. The contention the cheque was not issued in discharge of any legally enforceable debt or liability and the same was forcibly taken away from the petitioner and there was no witness of voluntary handing over the cheque are the matters which can only be gone into during the trial not at this stage when the petitioner has approached this Court for quashing of the complaint.

6. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

7. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)