

Criminal Revision
Present: The Hon'ble Justice Ashim Kumar Roy

Judgment On : 05-05-2010.

C.R.R. No. 4348 of 2009

Prasad Chandra Paul
versus
Sinha Multilevel Marketing Pvt. Ltd.

Points:

QUASHING- Cheque dishonoured- Application under section 138 of the Negotiable Instrument Act filed-Ground for quashing-Disposal of the petition-Negotiable Instrument Act, 1881 S.143- Code of Criminal Procedure, 1973, S 482

Facts:

The cheque was issued in discharge of a legally enforceable debt, was presented to its banker by the complainant on 1st of January, 2009 for encashment. On 14th of January, 2009 he came to learn from his bank that same has been dishonoured on the instruction of the drawer to stop payment----- a notice of demand was sent on 27th of January, 2009 and the accused persons by their lawyer's letter dated 12th of February, 2009 although acknowledged the receipt of such demand notice, disputed the claim of the complainant----- the petition of complaint thereafter was filed on 5th of March, 2009---Hence this instant application for quashing of the complaint case was filed by accused.

Held:

In a case where the question is one of quashing of a complaint, the only thing that Court has to see whether on the face of the allegations the offence has been made out or not. Para 3

The cheque being presented to the bank for encashment on January 1, 2009 obviously same cannot be dishonoured prior to that day and in the case the demand notice was sent on January 27, 2009, i.e., within the 30 days from the date of dishonour. Thereafter, the Learned Lawyer of the accused by his letter dated 12th of February, 2009 acknowledged the receipt of the demand notice although disputed the claim of the complainant. Now, the complaint was filed on March 5, 2009, therefore, it cannot be said the complaint was filed without issuing demand notice within 30 days from the date of dishonour of cheque and/or without affording opportunity of making payment to the accused within the 15 days from the date of receipt of demand notice. **Para-3**

It appears that the aforesaid proceeding under Section 138 of the Negotiable Instruments Act was initiated on a complaint filed on 5th of March, 2009, already six months from the date of filing of the complaint has been expired but till date trial has not been concluded. In such view of the matter, the Trial Court is directed to conclude the trial strictly in terms of the provisions of Section 143 of the Negotiable Instruments Act. **Para-5**

For Petitioner : Mr. Rwitendra Banerjee

The Court:

Invoking Section 482 of the Code of Criminal Procedure, the petitioner moved the instant criminal revision for quashing of a complaint relating to an offence punishable under Section 138 of the Negotiable Instruments Act.

2. The grounds raised in this application in support of prayer for quashing are as follows;

(a) The notice of demand was not sent within 30 days from the receipt of intimation from the bank.

(b) The complainant in the affidavit-in-chief although claimed to have come to know about the dishonour of cheque on January 24, 2009, but in his complaint it was stated that he came to know the cheque was dishonoured on January 14, 2009.

(c) The complaint is purely harassing.

3. I have given my anxious consideration to the submissions made on behalf of the complainant. In a case where the question is one of quashing of a complaint, the only thing that Court has to see whether on the face of the allegations the offence has been made out or not. According to the petition of complaint the cheque in question which was issued in discharge of a legally enforceable debt, was presented to its banker by the complainant on 1st of January, 2009 for encashment and on 14th of January, 2009 he came to learn from his bank that same has been dishonoured on the instruction of the drawer to stop payment. Thereafter a notice of demand was sent on 27th of January, 2009 and the accused persons by their lawyer's letter dated 12th of February, 2009 although acknowledged the receipt of such demand notice, disputed the claim of the complainant, and the petition of complaint thereafter was filed on 5th of March, 2009. Thus, the cheque being presented to the bank for encashment on January 1, 2009 obviously same cannot be dishonoured prior to that day and in the case the demand notice was sent on January 27, 2009, i.e., within the 30 days from the date of dishonour. Thereafter, the Learned Lawyer of the accused by his letter dated 12th of February, 2009 acknowledged the receipt of the demand notice although disputed the claim of the complainant. Now, the complaint was filed on March 5, 2009, therefore, it cannot be said the complaint was filed without issuing demand notice within 30 days from the

date of dishonour of cheque and/or without affording opportunity of making payment to the accused within the 15 days from the date of receipt of demand notice.

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

5. It appears that the aforesaid proceeding under Section 138 of the Negotiable Instruments Act was initiated on a complaint filed on 5th of March, 2009, already six months from the date of filing of the complaint has been expired but till date trial has not been concluded. In such view of the matter, the Trial Court is directed to conclude the trial strictly in terms of the provisions of Section 143 of the Negotiable Instruments Act.

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.)