

Criminal Revision

Present:

The Hon'ble Justice Ashim Kumar Roy

Judgment on 03.09.2010

C.R.R. No. 1906 of 2010

Meghla Biswas

versus

The State Of West Bengal & Ors.

Points:

Dishonour of cheque - Whether a criminal case under Section 138 of the Negotiable Instruments Act for dishonour of a particular cheque as well as a suit for recovery of the amount covered under the said cheque can proceed simultaneously.-Negotiable Instruments Act, 1881 S.138

Facts:

After dishonour of a cheque of Rs. 6 lakhs which she issued in favour of the opposite party, her husband went to the office of the petitioner and requested him to re-deposit the cheque as at that time sufficient amount of money was available in the account, on which such cheque was drawn, to honour the same. However, the complainant without keeping such request, issued demand notice on the basis of the earlier dishonour and thereafter filed the impugned complaint. Following the dishonour of the cheque the complainant sent a letter to the Commissioner of Police, Calcutta with a copy of the Officer-in-Charge, Taltala Police Station alleging various defamatory and false allegations against her husband Nirmal Biswas, who happened to be a Sub-Inspector of Police, whereupon her husband has filed a civil suit for defamation claiming damage before the Hon'ble High Court and the said case is still pending. Accordingly, it is prayed this complaint is

liable to be quashed as the same was filed out of sheer mala fide to harass the petitioner, although she had the clear intention to make payment and alternatively it is prayed that till the disposal of said suit for defamation and damage all further proceedings relating to the aforesaid complaint case be stayed because both are arising out of the selfsame cause of action.

Held:

The grounds on which the petitioner is seeking quashing of the complaint are all disputed question of facts and cannot be gone into at this stage. The subject matter of the complaint case which is now pending before the Learned Metropolitan Magistrate and the subject matter of the suit pending before the Hon'ble High Court are completely distinct and different and the parties are also not the same, one has no connection with the other. The submissions that both the said cases were arising out of self-same cause of action or transaction is wholly baseless. While the criminal case was instituted in a Court of Magistrate against the petitioner under Section 138 of the Negotiable Instruments Act for dishonour of a cheque, the aforesaid civil suit was instituted by the husband of the petitioner against the complainant of the aforesaid criminal case, the opposite party herein for defamation and damage. Even, a criminal case under Section 138 of the Negotiable Instruments Act for dishonour of a particular cheque as well as a suit for recovery of the amount covered under the said cheque can proceed simultaneously and there is no legal bar. Para 4

Cases cited:

Sri Krishna Agency Vs. The State of Andhra Pradesh & Anr., reported in (2009) 1 SCC 69

For Petitioner : Mr. Abhijit Chakraborti

For O.P. Nos. 3 & 4 : Mr. Subir Kumar Ghosh

Ms. Krishnakali Swar

Mr. Debasish Mallick Chowdhury

With

C.R.R. No. 1524 of 2010

Sri Dilip Kumar Das

versus

Smt. Meghala Biswas

For Petitioner : Mr. Subir Kumar Ghosh

Ms. Krishnakali Swar

Mr. Debasish Mallick Chowdhury

For Opposite Party : Mr. Abhijit Chakraborti

The Court: In C.R.R. No. 1906 of 2010 while the petitioner, who has been facing his trial before the Learned Metropolitan Magistrate, 17th Court, Calcutta in connection with the Case No. C-2329/06 relating to an offence punishable under Section 138 of the Negotiable Instruments Act has approached this Court seeking a relief by way of stay of all further proceedings of the aforesaid complaint case on the ground, over the self-same facts a civil suit is pending between the parties before the Hon'ble High Court at Calcutta. In C.R.R. No. 1524 of 2010 the complainant of the aforesaid case approached this Court for a direction for expeditious conclusion of the said trial on the ground that the same is pending in violation of mandate of sub-section (3) of Section 143 of the Negotiable Instruments Act as directed earlier both the criminal revisions are taken up for hearing together.

2. Heard the Learned Counsels appearing on behalf of the parties. Perused the materials on record.

3. According to the learned advocate of the petitioner, in C.R.R. No. 1906 of 2010 that after dishonour of a cheque of Rs. 6 lakhs which she issued in favour of the opposite party, on January 16, 2006 her husband went to the office of the petitioner and requested him to re-deposit the cheque as at that time sufficient amount of money was available in the account, on which such cheque was drawn, to honour the same. However, the complainant without keeping such request, issued demand notice on February 28, 2006 on the basis of the earlier dishonour and thereafter filed the impugned complaint. It is the further submissions of the learned advocate of the petitioner in C.R.R. No. 1906 of 2010 that following the dishonour of the cheque the complainant sent a letter to the Commissioner of Police, Calcutta with a copy of the Officer-in-Charge, Taltala Police Station alleging various defamatory and false allegations against her husband Nirmal Biswas, who happened to be a Sub-Inspector of Police, whereupon her husband has filed a civil suit for defamation claiming damage being C.S. No. 62 of 2006 before the Hon'ble High Court and the said case is still pending. Accordingly, it is prayed this complaint is liable to be quashed as the same was filed out of sheer mala fide to harass the petitioner, although she had the clear intention to make payment and alternatively it is prayed that till the disposal of said suit for defamation and damage all further proceedings relating to the aforesaid complaint case be stayed because both are arising out of the selfsame cause of action.

4. I have given my anxious and thoughtful consideration to the submissions made on behalf of the learned advocate of the petitioner. However, having gone through the petition of complaint and other relevant documents, viz.,

demand notice etc. which have been annexed with this application I find the case of the complainant is completely different from that of the case the present petitioner is trying to make out at this stage. According to the allegations of the complainant after the cheque was dishonoured for the first time in the month of January, 2006 on the request of the husband of the petitioner, the complainant re-deposited the cheque for the second time in the month of February, 2006, but such cheque was returned by the bank on which same was drawn by its return memo dated February 6, 2006 with the remarks "fund insufficient". Thereafter, on February 20, 2006 the complainant sent the demand notice to the accused, the petitioner herein for the first time but in spite of receipt of such demand notice when no payment was made within the stipulated period the impugned complaint was made in the Court. Thus, it cannot be said that no case has been made out against the petitioner, moreover the grounds on which the petitioner is seeking quashing of the complaint are all disputed question of facts and cannot be gone into at this stage. I further find the subject matter of the complaint case which is now pending before the Learned Metropolitan Magistrate, 17th Court, Calcutta and the subject matter of the suit pending before the Hon'ble High Court are completely distinct and different and the parties are also not the same, one has no connection with the other. The submissions that both the said cases were arising out of self-same cause of action or transaction is wholly baseless. While the criminal case was instituted in a Court of Magistrate against the petitioner under Section 138 of the Negotiable Instruments Act for dishonour of a cheque, the aforesaid civil suit was instituted by the husband of the petitioner against the complainant of the aforesaid criminal case, the opposite party herein for defamation and damage. Even, a criminal case under Section 138 of the Negotiable

Instruments Act for dishonour of a particular cheque as well as a suit for recovery of the amount covered under the said cheque can proceed simultaneously and there is no legal bar. In this connection reliance may very well be placed in the case of Sri Krishna Agency Vs. The State of Andhra Pradesh & Anr., reported in (2009) 1 SCC 69. Thus, the question of stay of all further proceedings relating to the Case No. C-2329/06, now pending before the Learned Metropolitan Magistrate, 17th Court, Calcutta till the disposal of C.S. No. 62 of 2006, now pending before this Hon'ble High Court does not at all arise. As observed hereinabove, on the face of those allegations made in the impugned complaint it cannot be said no offence has been made out.

5. This criminal revision has no merit and accordingly stands dismissed.

6. So far as the C.R.R. No. 1524 of 2010, the petitioner who happened to be the complainant of the Case No. C-2329/2006, now pending before the Learned Metropolitan Magistrate, 17th Court, Calcutta punishable under Section 138 of the Negotiable Instruments Act, has approached this Court for a direction for expeditious conclusion of the trial of the said case. Now, having regards to the facts that the aforesaid complaint has been filed sometime in March 21, 2006 and till date after recording of the plea under Section 251 of the Code, there has been no progress in the trial and not a single witness has been examined. In fact the trial is pending in complete violation of the provision of the sub-section (3) of Section 143 of the Negotiable Instruments Act. Accordingly, the Learned Metropolitan Magistrate, 17th Court, Calcutta before whom the aforesaid complaint case is pending is directed to commence the trial at once and further directed the trial to be continued from day to day until its conclusion and no adjournment shall be granted to either of the parties, unless court finds the same is

necessary for ends of justice or for any unforeseen circumstances. The Learned Trial Court is directed to make all endeavours to conclude the trial within two months from the next date fixed for recording of evidence. Both the parties are directed to be present before the Trial Court with notice to each other on any working day within a week from this date, when the Learned Magistrate in their presence fix the next date of recording of evidence, but such date must not be fixed beyond the period of a fortnight. In the event the parties are unable to present in Court personally for some bona fide reasons, in such case they must be represented through their respective Learned Lawyers.

7. In the result while C.R.R. No. 1906 of 2010 fails and dismissed, the C.R.R. No. 1524 of 2010 succeeds and allowed.

8. 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.)

