

Criminal Revision
Present: **The Hon'ble Justice Ashim Kumar Roy**
Judgment on: 22.02.2010
C.R.R. No. 3584 of 2009
With
CRAN No. 3485 of 2009
Soumya Kanti Roy
versus
HDFC Bank Ltd.

Point:

Quashing: Criminal case whether can be quashed if the conflict is a pure question of fact- Code of Criminal Procedure, 1973-S.482

Fact: Invoking Section 482 of the Code of Criminal Procedure the petitioner has moved the instant criminal revision for quashing of a case relating to the offence punishable under Section 138 of the Negotiable Instruments Act inter alia on the grounds that the person concerned who filed the impugned complaint representing the company, a juristic person has not produced the board resolution while making the complaint.

Held: The value of such power of attorney can only be assessed at the stage of the trial which has not yet commenced. (Paragraph – 2)

The conflict, if any, in the petition of complaint as well as over writing appearing in the petition of complaint, if at all, may touch the probative value of the complainant's case and is a pure question of facts and cannot be gone into at this stage. Para 2

It is also well settled that when the notice is sent to a correct address by registered post there shall be a presumption of due service. (Paragraph – 3)

Cases cited: M.M.T.C. Ltd. & Anr. Vs. M/s. Medchl Chemicals & Pharma (P) Ltd. and Anr., reported in 2002 C Cr LR (SC) 249
C. C. Alavi Haji Vs. Palapetty Muhammed & Anr. reported in (2008) 1 C Cr LR (SC) 69

For Petitioner : Mr. Samim Ahmed
Mr. Samrat Das
For Opposite Party : Mr. Sandipan Ganguly

The Court: 1. Invoking Section 482 of the Code of Criminal Procedure the petitioner has

moved the instant criminal revision for quashing of a case relating to the offence punishable under Section 138 of the Negotiable Instruments Act on the following grounds;

- (a) The person concerned who filed the impugned complaint representing the company, a juristic person has not produced the board resolution while making the complaint.
- (b) There are several conflict between the allegations made in the petition of complaint.
- (c) The date of dishonour of the cheque was mentioned as January 5, 2009, but subsequently it was over written as May 4, 2009.
- (d) No date has been mentioned in regard to the written intimation received from the bank of the complainant about dishonour.
- (e) No witness nor the postal peon has been examined to show when the demand notice was served upon the accused persons because it is not the issuance of the notice but the service would give rise to cause of action.

2. So far as the first contention of the petitioner is concerned it is sufficient to make an averment in the petition of complaint that the complainant has been duly authorized by the company concerned to make the complaint on its behalf. I find from the records that a power of attorney has also been filed along with the petition of complaint. The value of such power of attorney can only be assessed at the stage of the trial which has not yet commenced. Even assuming, that initially there was no authority still the company can at any stage rectify the defect by sending a person who is competent to represent the company. In this connection it would be sufficient to refer to the observation of the Hon'ble Apex Court at Paragraph 11 in the case of M.M.T.C. Ltd. & Anr. Vs. M/s. Medchl Chemicals & Pharma (P) Ltd. and Anr., reported in 2002 C Cr LR (SC) 249. The non-mentioning of the date when the complainant received the intimation from the bank about the dishonour of cheque is not at all relevant when the demand notice was issued within 30 days from the date of dishonour of the cheque. In the case at hand, the cheque was dishonoured on 4th of May, 2009 and notice was sent to the accused on 27th of May, 2009 which was received by him on June 1, 2009.

The conflict, if any, in the petition of complaint as well as over writing appearing in the petition of complaint, if at all, may touch the probative value of the complainant's case and is a pure question of facts and cannot be gone into at this stage.

3. It is also well settled that when the notice is sent to a correct address by registered post there shall be a presumption of due service. In this case there was no denial of the service of the demand notice. In this connection it would be more apposite to refer to the observation of the Hon'ble Supreme Court in paragraph 17 of the case of C. C. Alavi Haji Vs. Palapetty Muhammed & Anr., reported in (2008) 1 C Cr LR (SC) 69;

“It is also to be borne in mind that the requirement of giving of

notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the Court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the G. C. Act and Section 114 of the Evidence At. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskaran's case (supra), if the "giving of notice" in the context of Clause (b) of the proviso was the same as the "receipt of notice" a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act." (Para. 17)

For the reasons stated above, I do not find any merit in the instant criminal revision and accordingly, same stands dismissed. Interim order, if any, stands vacated.

In view of dismissal of the main criminal revisional application, the application for extension of interim order being CRAN No. 3485 of 2009 accordingly stands disposed of.

The Office is directed to send down the Lower Court Records at once. 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.*)