Jugesh Sehgal vs Shamsher Singh Gogi on 10 July, 2009

Equivalent citations: AIR 2009 SC (SUPP) 2022, 2009 (14) SCC 683, (2009) 4 ALLCRILR 192, (2009) 4 EASTCRIC 213, (2009) 66 ALLCRIC 696, (2009) 3 CURCRIR 378, (2009) 3 BANKCLR 248, (2009) 2 ORISSA LR 309, (2009) 44 OCR 31, (2009) 2 CRILR(RAJ) 649, (2009) 3 CHANDCRIC 204, (2009) 3 ALLCRIR 2655, (2009) 4 CIVLJ 239, (2009) 4 RAJ LW 3506, (2009) 2 NIJ 162, (2009) 3 BANKCAS 690, (2009) 9 SCALE 455, 2009 CRILR(SC&MP) 649, (2009) 3 ICC 835, 2009 CRILR(SC MAH GUJ) 649, (2009) 4 CIVILCOURTC 443, (2010) 1 BOMCR(CRI) 490, 2010 (2) SCC (CRI) 218, (2010) 1 BOM CR 903, (2009) 80 ALLINDCAS 9 (SC), (2009) 3 RECCRIR 712, (2009) 4 MAD LJ(CRI) 299, (2009) 2 ALD(CRL) 419, (2009) 80 ALLINDCAS 9

Author: D.K. Jain

Bench: D.K. Jain, R.M. Lodha

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _1180 OF 2009
ARISING OUT OF
SPECIAL LEAVE PETITION (CRIMINAL) NO. 369 OF 2006

JUGESH SEHGAL ... APPELLANT

VERSUS

SHAMSHER SINGH GOGI ... RESPONDENT

JUDGMENT

D.K. JAIN, J.

Leave granted.

2. This appeal arises from the judgment and order dated 13th December, 2005 rendered by a learned Single Judge of the High Court of Punjab & Haryana at Chandigarh in Criminal Miscellaneous No. 47932-M of 2004. By the impugned judgment, the learned Judge, while partly

allowing the petition preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code") seeking quashing of a private complaint filed by the respondent (hereinafter referred to as "the complainant") under Section 138 of the Negotiable Instruments Act, 1881 (for short "the Act") has dismissed the petition qua the appellant.

3. In order to appreciate the controversy, a few material facts may be stated thus:

> The complainant is engaged in the trading of petroleum products. According to him, the appellant, his father, brother and mother used to purchase mobile oil from him from time to time.
>
> According to the complainant, on 20th November, 2000, all four of them got issued a cheque bearing No. 227739 drawn on Indian Bank, Sonepat in the sum of Rs.24,92,115/- in discharge of their liability towards him. The complainant presented the cheque for payment to his bankers, which was returned unpaid on 29th December, 2000 with the remarks "Account closed". Thereafter, on 17th January, 2001, the complainant got a legal notice issued to all the four accused asking them to pay the cheque amount. In their reply to the legal notice, the accused denied having any business dealings with the complainant as also the issue of cheque in question by any one of them. Their stand was that no such cheque was ever signed, issued or got issued by them at any point of time in favour of the complainant.

4. Dissatisfied with the response to the legal notice, the complainant filed a complaint under Section 138 of the Act against the afore-noted four persons. Paragraph 3 of the complaint, which contains the gist of complainant's case and has a bearing on the issue involved in this appeal, reads as follows:

> "That the complainant handed over the cheque No. 227739, dt. 20.11.2000 of Indian Bank, Sonepat to its banker Oriental Bank of Commerce, Samalkha for the collection of the amount of aforesaid cheque after about one month as requested by the complainants. But the Indian Bank, Sonepat returned the said cheque with the remarks "Account closed" vide return memo dated 29.12.2000. The return memo dated 29.12.2000 alongwith original cheque was returned by the O.B.C., Samalkha alongwith its forwarding letter dt. 03.01.2001 to the complainant vide which the O.B.C., Samalkha also informed that a sum of Rs.3136/- has been debited in the complainant's account as collection charges. After receiving the return memo alongwith forwarding 03.01.2001, the complainant came to know for the first time that the accused have issued the aforesaid cheque dt. 20.11.2000 with a fraudulent intention knowing fully well that the accused have no sufficient amount for the encashment of the aforesaid cheque or the said account was not in existence on that date or the said account pertained to someone else. The complainant has also came to know that all the above named accused being a family members, formed an unlawful group to play fraud with the public and there was several other instances."

(emphasis supplied)

5. The Chief Judicial Magistrate, Panipat took cognizance of the complaint and vide order dated 20th September, 2003, directed issue of notice to all the accused. All the accused put in appearance; notice of accusation was given; they pleaded not guilty and claimed trial. Thereafter, all the four accused filed petition under Section 482 of the Code praying for quashing of the complaint. As noted earlier, by a short order, the High Court has dismissed the petition qua accused No.1, the appellant herein, on the ground that the plea of the appellant that the cheque was not issued by him involved a disputed question of fact which could not be gone into by the Court in proceedings under Section 482 of the Code. As regards the rest of three accused petitioners, the learned Judge allowed the petition holding that neither the cheque had been issued by them nor they had been shown to be vicariously liable under Section 141 of the Act. Aggrieved by the said decision, the appellant has come up in appeal before us.

6. Learned counsel appearing for the appellant submitted that the High Court gravely erred in declining to exercise its jurisdiction under Section 482 of the Code in a case where the complaint ex facie lacked the basic ingredients of the offence under Section 138 of the Act for which the appellant has been made to stand trial. It was contended that admittedly, the cheque in question, purportedly issued by the appellant, was from an account not maintained by him with the Indian Bank but by one Ms. Shilpa Chaudhary and therefore, the basic ingredient of Section 138 of the Act was missing. It was also urged that since the said bank account had already been closed on 3rd November, 2000, there was no question of the subject cheque being issued in favour of the complainant by the appellant on 20th November, 2000. It was pleaded that the filing of the complaint under the said provision is an abuse of the process of the Court and therefore, the High Court ought to have quashed the complaint.

7. Per contra, learned counsel appearing on behalf of the complainant, supported the impugned order and submitted that having issued the cheque to the complainant under his signatures by making a false representation that the account was maintained by him, the appellant had duped the complainant. It was contended that at this juncture the question whether or not the cheque was issued by the appellant is pre-mature as the same would be determined only after the evidence has been led by the parties. Learned counsel thus, argued that the appellant having played a fraud on the complainant, does not deserve any relief.

8. It is true that Section 138 of the Act was enacted to punish unscrupulous drawers of cheques who, though purport to discharge their liability by issuing cheque, have no intention of really doing so, yet to fasten a criminal liability under the said provision, necessary ingredients of the Section are to be satisfied. Section 138 of the Act reads as follows:

> 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.

9. It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that 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;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank;

(v) the payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice;

10. Being cumulative, it is only when all the afore-mentioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act.

11. In the case before us, it is clear from the facts, briefly noted above, and in para 3 of the complaint as extracted, that on receipt of the return memo from the bank, the complainant is stated to have realized that the dishonoured cheque was issued from an account which was not maintained by accused No.1--the appellant herein, but by one Shilpa Chaudhary. As a matter of fact and perhaps having gained the said knowledge, on 20th January, 2001, the complainant filed an FIR against all the accused for offences under Sections 420, 467, 468, 471, 406 of the Indian Penal Code (IPC). Thus, there is hardly any dispute that the cheque, subject matter of the complaint under Section 138 of the Act, had not been drawn by the appellant on an account maintained by him in the Indian Bank, Sonepat branch. That being so, there is little doubt that the very first ingredient of Section 138 of the Act, enumerated above, is not satisfied and consequently the case against the appellant for having committed an offence under Section 138 of the Act cannot be proved.

12. The next question for consideration is whether or not in the light of the afore-mentioned factual position, as projected in the complaint itself, it was a fit case where the High Court should have exercised its jurisdiction under Section 482 of the Code?

13. The scope and ambit of powers of the High Court under Section 482 of the Code has been enunciated and reiterated by this Court in a series of decisions and several circumstances under which the High Court can exercise jurisdiction in quashing proceedings have been enumerated. Therefore, it is unnecessary to burden the judgment by making reference to all the decisions on the point. It would suffice to state that though the powers possessed by the High Courts under the said provision are very wide but these should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. The powers have to be exercised sparingly, with circumspection and in the rarest of rare cases, where the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed. [See: Janata Dal Vs. H.S. Chowdhary & Ors.1, Kurukshetra University & Anr. Vs. State of Haryana & Anr.2 and State of Haryana & Ors. Vs. Bhajan Lal & Ors.3]

14. Although in Bhajan Lal's case (supra), the court by way of illustration, formulated as many as seven categories of cases, wherein the extra-ordinary power under the afore-stated (1992) 4 SCC 305 (1977) 4 SCC 451 1992 Supp (1) SCC 335 provisions could be exercised by the High Court to prevent

abuse of process of the court yet it was clarified that it was not possible to lay down precise and inflexible guidelines or any rigid formula or to give an exhaustive list of the circumstances in which such power could be exercised.

15. The purport of the expression "rarest of rare cases" has been explained very recently in Som Mittal Vs. Government of Karnataka4. Speaking for the three-Judge Bench, Hon'ble the Chief Justice said:

> "When the words 'rarest of rare cases' are used after the words 'sparingly and with circumspection' while describing the scope of Section 482, those words merely emphasize and reiterate what is intended to be conveyed by the words 'sparingly and with circumspection'. They mean that the power under Section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression "rarest of rare cases" is not used in the sense in which it is used with reference to punishment for offences under Section 302 IPC, but to emphasize that the power under Section 482 Cr.P.C. to quash the FIR or criminal proceedings should be used sparingly and with circumspection."

16. Bearing in mind the above legal position, we are of the opinion that it was a fit case where the High Court, in exercise of its (2008) 3 SCC 574 jurisdiction under Section 482 of the Code, should have quashed the complaint under Section 138 of the Act.

17. As already noted hereinbefore, in para 3 of the complaint, there is a clear averment that the cheque in question was issued from an account which was non-existent on the day it was issued or that the account from where the cheque was issued "pertained to someone else". As per complainant's own pleadings, the bank account from where the cheque had been issued, was not held in the name of the appellant and therefore, one of the requisite ingredients of Section 138 of the Act was not satisfied. Under the circumstances, continuance of further proceedings in the complaint under Section 138 of the Act against the appellant, would be an abuse of the process of the Court. In our judgment, therefore, the decision of the High Court cannot be sustained.

18. In the result, the appeal is allowed; the impugned order is set aside and as a consequence, Criminal Complaint No. 275 of 2008 pending against the appellant in the Court of Chief Judicial Magistrate, Panipat is quashed.

.....J. (D.K. JAIN) .....J. (R.M. LODHA) NEW DELHI;

JULY 10, 2009.

IN THE SUPREME COURT OF INDIA

CRIMINAL APPEAL NO. 1180 OF 2009

Jugesh Sehgal .. Appellant(s)

Versus

Shamsher Singh Gogi .. Respondent(s)

ORDER

Criminal Complaint No. 275 of 2008 mentioned in paragraph 18 of the judgment dated July 10, 2009 be read as "Criminal Complaint No. 59/2 of 2001".

.....J.
[D.K. JAIN]

.....J. [R.M. LODHA]

NEW DELHI,
JULY 16, 2009.