

R.S. Traders

Vs

Rita Khanna and Another

Criminal Appeal No. 1711 of 1996

(S. P. Bharucha, Faizanuddin JJ)

20.09.1996

ORDER

1. Notice was issued to the first respondent on 22-9-1995, which stated that the matter might be disposed of at the SLP stage itself even if the first respondent remained unrepresented. This was occasioned by the fact that an earlier notice had been served upon her, but she had remained absent. There is an affidavit of dasti service which states that the first respondent refused to accept the fresh notice and a copy thereof was pasted on her door. The service on the first respondent is, therefore, complete.

2. Leave granted.

3. The appeal is directed against an order passed by a learned Single Judge of the Punjab & Haryana High Court on a petition under Section 482 of the Criminal Procedure Code.

4. The appellants supplied certain material and payment therefor in the sum of Rs 10,000 was received by them in the form of a cheque dated 6-6-1991, drawn by the first respondent upon the Canara Bank, Amritsar. The cheque was dishonoured with the remark "funds insufficient" on 7-6-1991. It was re-presented on 8-6-1991, 21-6-1991, and 3-12-1991, and dishonoured for the same reason. On 16-12-1991, the appellants served upon the first respondent a notice under the provisions of Section 138 of the Negotiable Instruments Act, 1881 and instituted a complaint. Upon hearing the evidence of a clerk of the Canara Bank and the appellants, the trial court issued an order summoning the first respondent. The first respondent thereupon instituted the aforementioned petition in the High Court. It was argued on her behalf before the High Court that the appellants had not been diligent in invoking the provisions of Section 138. The High Court accepted the contention and observed that a creditor was expected to invoke these provisions immediately if he intended to avail of this penal remedy. The High Court, accordingly, quashed the complaint against the first respondent.

5. As aforesaid, the cheque was first presented on 6-6-1991. It was re-presented thrice in June 1991 and thereafter on 3-12-1991. On all these occasions it was dishonoured for want of funds. The complaint under Section 138 was filed on 16-12-1991. We do not see any undue delay that would debar the successful invocation of the provisions of Section 138 by the appellants. We may observe that there have been no successive prosecutions or convictions on the strength of one dishonoured cheque, which would appear to have been a consideration which weighed with the High Court.

6. The appeal is allowed. The judgment and order under appeal dated 1-10-1992, is set aside. The proceedings in the complaint may now continue.

7. No order as to costs.