

SUPREME COURT OF INDIA

Bilakchand Gyanchand Co.

Vs.

A. Chinnaswami

(B Kirpal and S R Babu JJ.)

12.03.1999

ORDER

1. Leave granted.

2. Six cheques were issued in favour of the appellant herein. The cheques were signed by A. Chinnaswami, Managing Director of Shakti Spinners Ltd. When the cheques were presented for payment, they were, dishonoured on the ground that 'sufficient funds were not available and exceed arrangement'. A notice was then sent by the appellant which the respondent refused to accept. This was followed by a complaint under Section 138 read with Section 142 of the Indian Negotiable instruments Act in the court of the Judicial Magistrate, 1st. Class, Chopda, District Jalgaon, Maharashtra. On the complaint, being filed, process was issued against the accused.

3. The respondent moved an application before the Magistrate asking him to recall the process. Having failed in this attempt, a petition under Section 482 Cr.P.C. was filed in the High Court. The High Court by the impugned judgment came to the conclusion that notice under Section 138 was sent by the appellant herein to A. Chinnaswami at his office address but this could not mean that the notice was sent to the company itself. On this ground alone, the High Court allowed, the petition and quashed the complaint which was filed.

4. In our opinion, the High Court erred in quashing the complaint. It is evident that proceedings were initiated by the appellant against A. Chinnaswami who happened to be the Managing Director of Shakti Spinners Ltd. The cheques in question which were dishonoured were signed by him. The process was issued by the Judicial Magistrate in his name. We see no infirmity in the notice issued under Section 138 addressed to A. Chinnaswami, who was a signatory of the said cheques. The High Court, in our opinion, clearly fell in error in allowing the petition under Section 482 Cr.P.C. and in quashing the complaint & setting aside the proceedings pending before the Judicial Magistrate.

5. For the aforesaid reasons, these appeals are allowed and the order of the High Court is set aside. The Judicial Magistrate will now proceed to decide S.C.C. Nos. 155 of 1995 and 156 of 1995 in accordance with law as expeditiously as possible.

