

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2255 OF 2009
[arising out of SLP(CRL.) No. 2353 of 2009]

M/S SACHMI CREATION

.....

APPELLANT

VERSUS

SMT. PUSHPA DEVI

.....

RESPONDENT

O R D E R

Leave granted.

This appeal is directed against the order dated 17th September, 2008, passed by the learned Single Judge of the High Court of Delhi whereby she quashed the Complaint No. 624/1/2007 filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act').

We have heard the learned counsel for the parties.

A perusal of the record shows that the appellant filed complaint dated 1st March, 2007, under Section 138 of the Act alleging that the respondent had given ten cheques of Rs 1 lac each in discharge of her liability against the value of the goods but when the cheques were presented for encashment, the same were not honoured by the bank and were returned with memo dated 6th January, 2007. On 1st May, 2007, the trial court took cognizance and issued summons to the respondent who challenged the same by filing petition under Section 482 of the Code of Criminal Procedure (Cr.P.C.). The High Court delved into the merits of the allegations made in the complaint, considered the respondent's assertion that the cheques were given as security under the marketing agreement and concluded that the provisions of Section 138 of the Act are not attracted in such a case.

In our view, the High Court is per se contrary to the law laid down by this court - State of Haryana v. Bhajan Lal (1992) Suppl 1 SCC 335, R. Kalyani v.

Janak C. Mehta (2009) 1 SCC 516 and Mahesh Chaudhary v. State of Rajasthan (2009) 4 SCC 439. While exercising power under Section 482, Cr.P.C., the High Court was not justified in examining the merits of the allegations made in the complaint and record an adverse finding on the issue of maintainability of the complaint.

For the reason afore-stated, the appeal is allowed and the impugned order is set aside. The concerned Court shall now proceed with the complaint and dispose of the same in accordance with law.

.....J
[G.S. SINGHVI]

JUDGMENT

.....J
[ASOK KUMAR GANGULY]

NEW DELHI
NOVEMBER 20, 2009.