

Sunil Kumar Mehrotra Vs. State of Bihar and anr.

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Court : Patna

Decided On : Apr-05-2004

Judge : Navin Sinha, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 420; [Negotiable Instruments Act, 1881](#) - Sections 138

Appeal No. : Cr. Misc. No. 17009 of 2003

Appellant : Sunil Kumar Mehrotra

Respondent : State of Bihar and anr.

Advocate for Def. : Rana Pratap Singh, Sr. Adv. and Sumant Singh, Adv. for the Opp. Party No. 2

Advocate for Pet/Ap. : Kali Das Chatterji, Adv.

Prior history : Navin Sinha, J. 1. This application has been preferred by the sole petitioner under Section 482 of the Code of Criminal Procedure for quashing of the order dated 28.4.2003 passed by the learned Judicial Magistrate, Ist Class, Patna, taking cognizance against the petitioner in Complaint Case No. 2457 /2002 instituted under Section 420, IPC and Section 138 of the Negotiable Instrument Act, 1881. 2. Opposite party No. 2 filed the aforesaid complaint case before the Court of Chief Judicial Magistr

Judgement :

Navin Sinha, J.

1. This application has been preferred by the sole petitioner under Section 482 of the Code of Criminal Procedure for quashing of the order dated 28.4.2003 passed by the learned Judicial Magistrate, 1st Class, Patna, taking cognizance against the petitioner in Complaint Case No. 2457 /2002 instituted under Section 420, IPC and Section 138 of the Negotiable Instrument Act, 1881.

2. Opposite party No. 2 filed the aforesaid complaint case before the Court of Chief Judicial Magistrate, Patna on 25.11.2002. The complaint petition stated M/s. Sunil Polyplast Limited, a company in which the petitioner herein was one of the Directors applied for grant of financial assistance and term loan in the prescribed manner. The complainant corporation after appropriate inquiry/formalities sanctioned the term loan to the company M/s. Polyplast Ltd. in the year 1989 to the extent of Rs. 90 lakhs. Consequent to the failure of the company and its Directors to repay the dues proceedings were initiated against the company on 17.1.2002 under Section 29 of the State Finance Corporation Act. Proceedings under the Public Demand Recovery Act, 1914 were also initiated on 31.3.2002 to recover the dues. The petitioner, who is one of the Directors of the company, submitted a cheque of Rs. 1,28,42,000/- and later on the company further submitted five cheques of Rs. 1 lac each towards the aforesaid dues. The description of cheques relevant for purposes of the present case are given below:

Sl. Cheque No. Dated Amount

No.

1. 508600 20.9.2002 1,28,42,000/-

2. 508517 18.9.2002 1,00,000/-

3. 508515 29.8.2002 1,00,000/-

These cheques were presented for clearance on 10.10.2002 and 28.10.2002 but were returned with the endorsement 'payment stopped by drawer'. These cheques were post- dated and were given towards satisfaction of dues. The complainant

corporation presented the aforesaid three cheques on the due dates which were dishonoured and returned back with the endorsement 'payment stopped by drawers'. Despite issuance of legal notice under Section 138 of the N.I. Act the amounts were not paid in accordance with law and in the manner prescribed. The complainant corporation thus contended that the present accused in the complaint from the very beginning had the intention to cheat and issued the said cheques in pursuance thereof and that they never intended the said cheques to be honoured for payment of dues. Thus the present complaint was filed under Section 138 of the N.I. Act read with Section 420, IPC.

3. Mr. Kali Das Chatterji appearing for the petitioner, one of the Directors of the company, and accused No. 2 in the aforesaid complaint sought to assail the order of cognizance dated 28.4.2003 as also the entire criminal prosecution. Mr. Chatterji submitted that the corporation had already initiated regular proceedings for recovery of debts against the company of which the petitioner was one of the Directors. These proceedings were the subject-matter of the State Finance Corporation Act and the Public Demand Recovery Act. These proceedings would have culminated on their own merits with regard to the legal dues, debts and liabilities of the petitioner. It was submitted by Mr. Chatterji that pending these proceedings the opposite party corporation floated a one time settlement scheme (OTS). The corporation under this scheme invited offers for the settlement of pending debts and liabilities. This was clearly a case of invitation to offer only. The petitioner, Managing Director of M/s. Sunil Polyplast Ltd. submitted certain post-dated cheques to the corporation in pursuance of this OTS scheme. This offer was conditional and the cheques were to be encashed and presented to the Bank subject to the corporation accepting the counter offer made by the company for settlement of its dues under the OTS scheme. Mr. Chatterji thus submitted that these post-dated cheques were, not instruments presented in due course but were conditional instruments. The conditions not having been fulfilled by the failure of the corporation to confirm acceptance of the conditions subject to which the cheques were given, the company M/s. Sunil Polyplast Ltd. were fully justified in communication to the corporation before the due date of the cheque that the conditions offered along with the payment tendered stood withdrawn. The Bank was also instructed accordingly under intimation to the complainant corporation

before the due date to stop payment. Shri Chatterji thus contended that the post-dated cheques never became a valid tender till the date on which they became due. Since the company recalled the cheques before the due dates of maturity, Section 138 of the N.I. Act would have no applicability in the facts of the case. It was the contention of the petitioner that under Section 5 of the Contract Act the offeror or can revoke his proposal at any time before acceptance. The cheques were not given in the discharge of any contractual debt, but were given under a settlement scheme subject to acceptability by the corporation of counter proposal made by the petitioner under the settlement scheme. It was thus contended that in the facts of the case Section 420, IPC would have no application at all and the cognizance thereunder was bad.

4. In support of the aforesaid submissions, Mr. Chatterji placed reliance upon certain letters written by the company to the 16.9.2002 and 8.6.2002 respectively enclosed to the application under Section 482, Cr.PC.

5. Appearing on behalf of the opposite party corporation, learned Senior Counsel Mr. Rana Pratap Singh, submitted that it is not disputed by the petitioner they owed certain amounts to the corporation under a loan. The loans were not repaid leading to institution of proceedings for recovery of the same. It was thus contended that the outstanding debts and liabilities are not in dispute. The Company gave different post-dated cheques to the corporation in satisfaction of such debts. The cheques were presented on due dates and were dishonoured. Despite notice under Section 138 of the N.I. Act payment was not forthcoming. It was thus apparent that the petitioner and the company had dishonest intention to cheat under Section 420, IPC from the very inception when the cheques were given.

6. In reply Mr. Chatterji sought to place reliance upon the statement on S/A of Surendra Prasad Singh, deposing on behalf of the corporation which stated that the corporation never accepted any condition. It was thus contended that it was apparent from the said deposition that the counter offer made by the petitioner, subject to which the post-dated cheques were given, not having been accepted, the petitioner was fully justified in revoking the payments before due date by

instruction to the Bank under intimation to the complainant corporation.

7. Having considered the rival submissions made on behalf of the parties it is apparent that the petitioner owed certain debts and liabilities to the corporation. In this background certain cheques were admittedly given by the petitioner to the corporation. The contention on behalf of the petitioner that the post-dated cheques in question were not issued in satisfaction of debts or liability, cannot be accepted. Merely because certain proceedings had been initiated for recovery of the debts under Section 29 of the State Financial Corporation Act and the Public Demand Recovery Act, the payments not having been made in the said proceedings, cannot be a ground to urge that the present post-dated cheques were not made in satisfaction of debts or liability. This would be the limitation for this Court under Section 482, Cr. PC to look into the matter. The law in regard to post-dated cheques has been spelt out by the Supreme Court in *Goaplast(P) Ltd. v. Chiko Ursula D 'Sauza and Anr.*, II (2003) SLT410=I (2003) CCR410=II (2003) BC 71 (SC)=(2003) 3 SCC 232. It has been lucidly stated that a post-dated cheque was a mode of deferred payment and the payee of the cheque on the faith that he will get his payment on the due date accepts such deferred payment by way of such post-dated cheques. He should, therefore, not suffer on account of non-payment. The intention of the Legislature was that such post-dated instrument should inspire confidence in commercial transaction and the same would be completely lost if the parties are allowed to interdict the payment by issuing instruction to the Bank to stop payments of such post-dated cheques. A post-dated cheque would lose its credibility and acceptability if its payment can be stopped routinely. The purpose of a post-dated cheque is to provide some accommodation to the drawer of the cheque. The drawer should, therefore not be allowed to abuse the accommodation so given to him by way of a post- dated cheque. A contrary view that such action would fall outside the purview of Section 138 of the Negotiable Instruments Act would amount to allowing the parties to take advantage of his own wrong.

8. Learned Senior Counsel Mr. Rana Paratap Singh very rightly placed reliance upon Section 139 of the Negotiable Instruments Act to contend that there was a 'Presumption' in that law that a post-dated cheque was also given in satisfaction of a debt or liability and the aforesaid provision creates a presumption in favour of

holder of cheque. The section reads as follows :

'139. It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.'

Thus it has to be presumed that a post-dated cheque was also issued in discharge of any debt or other liability. This presumption can be rebutted by adducing evidence. The burden of proof would be on him who wishes to rebut this presumption. Quite obviously this rebuttal by adducing evidence with regard to a condition offered and not accepted by the corporation, etc. are issues which will have to be raised, dealt with and decided in a properly constituted trial and not in a proceeding under Section 482, Cr.PC.

9. Learned Senior Counsel Mr. Rana Pratap Singh placed reliance on the case of M.M.T.C. Ltd. and Anr. v. Medchl Chemicals and Pharma (P.) Ltd. and Anr., VIII (2001) SLT 83=IV (2001) CCR 316 (SC)=(2002) 1 SCC 234, to contend that in similar circumstance where it was sought to be contended that the post-dated cheques in question were not issued in satisfaction of any debt or liability could not be examined in a proceeding under Section 482 had to be the subject-matter of a duly constituted trial. It was further contended that the stoppage of payment under a cheque already issued would also come within the purview of Section 138.

10. The Supreme Court while considering the issue of stoppage of payment under a cheque already issued, dealing with the issue in Modi Cements Ltd. v. Kuchil Kumar Nandi, III (1988) SLT 226=I (1998) BC 421 (SC)=I (1999) CCR 44 (SC)=(1998) 3 SCC 249, held that denial of liability in satisfaction of which cheques were issued etc. were to be contested in a duly constituted trial and could not be the subject matter of assessment in a proceeding under Section 482, Cr.PC. More recently in a judgment, in the case of K.N. Beena v. Muniyappan and Anr., (2001)(I) 8 SCC 458, the Supreme Court has reiterated the aforesaid preposition. In a proceeding under Section 482 for quashing of prosecution, the matter has to be considered very stringently and with circumspection. Law is now well settled that this Court in a proceeding under Section 482, Cr.PC is not justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of

the allegations made in the complaint. The Court has not to consider the rival contentions by scrutiny of evidence by either side. The aforesaid letters at Annexures 2 and 5 of this application relied upon by the petitioner to contend that the cheques in question were a conditional offer and thus could validly be stopped from payment before the due date, etc., are issues which cannot be looked into by this Court. In the judgment in the case of State of M.P. v. Awadh Kishore Gupta and Ors., IV (2003) CCR 455 (SC)=VII (2003) SLT 323=(2004) 1 SCC 691, the Supreme Court has already cautioned with regard to this. The said Annexures 2 and 5 are not part of the complaint petition. These annexures cannot be looked into by this Court under Section 482 at this stage. These are matters essential for trial. This Court under Section 482 would not act as if it was a trial Judge. The Court is not required to appreciate the evidence to conclude whether the matters produced are sufficient, etc.

11. The object and ingredient, under the provisions of Sections 138 and 139 of the Act cannot be ignored. The proper and smooth functioning of all business transactions particularly of cheques as instruments, primarily depends upon integrity and honesty of the parties. To permit stoppage of payments of post-dated cheques before the due date and to take them out of the purview of Section 138, would substantially defy the sanctity and credibility of issuance of cheques in commercial transaction and erode confidence.

12. In view of the aforesaid reasoning and the law as enunciated repeatedly by the Supreme Court this Court holds that there is no infirmity in the order of cognizance dated 28.4.2003 insofar as Section 138 of the N.I. Act is concerned and that the proceedings in the complaint case under the said provisions do not call for any interference.

13. Insofar as the order of cognizance and the prosecution under Section 420, IPC is concerned this Court is of the opinion that no offence of cheating in issuance of cheques by the petitioner, is made out. There was no inducement or fraudulent representation by the petitioner while issuing the said cheques. The petitioner in his wisdom gave post-dated cheques along with a condition, the fulfilment of which was a pre-condition for payment of said cheques. In this simpliciter background it

cannot be said that the petitioner had cheated the complainant. The order of cognizance dated 28.4.2003 and the proceedings to that extent under 420, IPC are, therefore, quashed.

14. For the aforesaid reasons this Court declines to interfere with the order of cognizance and proceedings under Section 138, N.I. Act. The order of cognizance under Section 420, IPC and the proceedings thereunder are quashed for the reasons stated above.

15. In the result, this application is partly allowed to be extent indicated above.

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