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Court : Mumbai

Decided On : Mar-19-2003

Reported in : 2003CriLJ3610

Judge : J.G. Chitre, J.

Acts : Negotiable Instruments Act, 1887 - Sections 138 and 141

Appeal No. : Crl. Appln. No. 3183 of 1998

Appellant : Rohit Kumar Arora and anr.

Respondent : indravadan R. Shah and anr.

Advocate for Pet/Ap. : Manoj S. Mohite, Adv.;K.V. Saste, A.P.P.

Disposition : Petition dismissed

Judgement :

J.G. Chitre, J.

1. Shri Mohite submitted that there is no allegation in the complaint, against the petitioners that either of them signed the said cheque. He further submitted that there is no allegation in the complaint that they were liable to be punished in the capacity of the Directors of the Company of which they are Directors. He contended that they are not responsible for the conduct of the business of the

company and therefore, the learned Magistrate should have considered all these facets and should have refrained from issuing the process against them. He further submitted that as it has been done, the action taken by the Magistrate becomes illegal, in view of the judgment of the Supreme Court in the matter of K.P.G. Nair v. Jindal Menthol India Ltd., reported in : (2001)10SCC218 . He prayed for quashing of the order of issuing the process.

2. Shri Saste opposed the prayer and prayed for dismissal of the application by submitting that the order which is being impugned is correct, proper and legal.

3. In the judgment of K.P.G. Nair (supra) Supreme Court has held that :

'In view of Section 141, a person other than the company can be proceeded against under those provisions only if that person was in charge and was responsible to the company for the conduct of its business. Though words of Section 141(1) need not be incorporated in a complaint as magic words but substance of the allegations read as a whole should answer and fulfil the requirements of the ingredients of the said provision (for being proceeded against for an offence which he is alleged to have committed). On the above premise, it is clear that the allegations made in the complaint do not either in express words or with reference to the allegations contained therein make out a case that at the time of commission of the offence the appellant was in charge of and was responsible to the Company for the conduct of its business. Therefore, in this case the High Court has misdirected itself and committed an error in coming to the conclusion that the requirements of Section 141 are prima facie satisfied in so far as the appellant is concerned. The proceeding in question for the alleged offence under Section 138 as against the appellant stands quashed.'

4. It has been mentioned in the complaint in paragraph No. 3 that :

'that the accused had issued a cheque bearing No. 129741 dated 16th of August 1996 drawn on the Bank of Rajasthan Ltd., Varsova Branch, Bombay 400 058 for the sum of Rs. 18,00000, (Rupees Eighteen Lacs only) towards payment of the liability/debts payable by the accused to the complainant. The aforesaid cheque issued by the accused was deposited by the complainant with its bankers Bank of

India, Mumbai-400 023. The said cheque was then presented by the complainant's Bankers to the bankers of the accused i.e. Bank of Rajasthan Ltd.'

In paragraph No. 4 it has been alleged that :

'Bombay Branch of the Bankers of the accused vide their memo dated 19th August, 1996 informed the bankers of the complainant that there is stop payment. The bankers of the accused vide its memo dated 19th August, 1996 informed the bankers of the complainant, i.e. Bank of India, Bombay that the cheque has been dishonoured for nonpayment.'

5. The totality of the allegations made in the complaint and the impact created by it has to be seen. The possibility of the Directors making the arrangement, in between themselves that one should sign on the cheque when others are assuming the role of inactive Directors cannot be ignored. In respect of a partnership firm the possibility cannot be ruled out that one of the partners may sign on the cheque and the other may assume the role of sleeping partner. Therefore, it is necessary for the accused who is claiming to be exonerated or discharged to bring it to the notice of the Court that the plea raised by him after receiving the notice is as contemplated by the judgment of Supreme Court in Nair's case (supra).

6. 'The spirit behind enacting Sections 138, 139, 140 and 141 have to be understood in proper perspective and in real spirit. Those provisions have been enacted for the purpose of giving solace to the persons who received the cheques and got disappointed after presentation of the such cheques on due date to the bankers. After laps of certain period, they came to know that the amount which has been promised to be paid to them or cheques issued to them negotiable instrument has been denied on the date of presentation which happens to be the due date.'

7. The period which has been indicated by the cheque which has been dishonoured has a specific meaning and importance in commercial word and in commercial transactions. After the cheque is paid in commercial transaction, the holder of such cheque becomes entitled to sell it to some other for the purposes of

further commercial transactions, He does so normally. He transacts such cheque with the hope that such cheque would be honoured on presentation on due date or thereafter. In commercial word every Negotiable Instrument has such commercial utility and it can be the cause of profit earning. Therefore, disappointment of such holder has to be understood in proper perspective and importance has to be given to it.

8. Criminal cases which revolve around dishonouring of the cheques, are to be treated ab initio criminal cases unless the accused appears in the Court and brings such material before the Court making it to believe reasonably that it is the outcome of civil transactions and disputes. They being criminal cases, they are to be heard and decided as early as possible and positively within six months and they cannot be permitted to be prolonged and lingering like other matters, keeping in view fast moving commercial activities.

9. If the accused wants to get exonerated or discharged, he has to bring such material before the Court so as to convince it that he had no concern whatsoever with issuance of the cheque so dishonoured. If he has any defence to make, it is his duty to appear before the Court and to bring such material to the notice of the Court for getting exonerated or discharged.

10. In the present case, there appears to be no material which has been placed before the Court so as to satisfy with the defence which the present petitioner is taking at present.

11. In the present case, it is to be noted that the petitioners have neither annexed the copy of the complaint which must have been received by them nor the answers given by them to the demand notice which must have been sent to them after dishonour of the cheque in question. In the absence of that how the trial Court could have come to a conclusion that the petitioners are entitled to be exonerated or discharged? Even this Court cannot do so. Therefore, the petitioners should go to the trial Court and move an appropriate application in view of Mathew's case. The petitioners are at liberty to move writ petition in case they are aggrieved by the order of the trial Court after such material has been placed before the trial Court.

12. Thus, petition stands dismissed. Rule stands discharged. The stay granted by this Court stands vacated.

Parties concerned to act on a simple copy of this order, duly authenticated by the Court Stenographer/Sheristedar of this Court.

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