

Jagmohan and Etc. Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Nov-10-2004

Reported in : II(2005)BC456; 2005CriLJ1361

Judge : Amar Saran, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 137 and 138; [General Clauses Act, 1897](#) - Sections 27; Code of Criminal Procedure (CrPC) , 1974 - Sections 200, 202 and 482

Appeal No. : Cri. Misc. Application Nos. 2958 and 3013 of 1998

Appellant : Jagmohan and Etc.

Respondent : State of U.P. and anr.

Advocate for Def. : Dharmendra Singhal, Adv. and ;K.M. Tripathi, A.G.A.

Advocate for Pet/Ap. : P.C. Srivastava, Adv.

Judgement :

ORDER

Amar Saran, J.

1. Heard Sri P.C. Srivastava, learned counsel for the applicant and Sri Dharmendra Singhal, learned counsel for the complainant and perused the materials on record. These connected applications under Section 482, Cr. P.C.

have been filed for quashing the proceedings against the applicants-Jagmohan Singhal in the first application and Smt. Kamlesh Singhal in the second application, in Criminal Case No. 1590/9 of 1997 Km. Laxmi Garg v. Jagmohan Singhal under Section 138 of the Negotiable Instruments Act.

2. A complaint was filed by the opposite party No. 2 alleging that different cheques to the tune of Rs. 4,37,000/- have been issued on or between 12-7-1994 and 5-4-1995 by way of a loan. However, on non-payment of Rs. 3 lacs, the applicant and his wife co-accused-Smt. Kamlesh Singhal gave a cheque of Rs. 3 lacs bearing Cheque No. 117511 drawn on Nainital Bank Ltd., Muzaffar Nagar. The applicant-Jagmohan Singhal is said to have signed all the cheques, however, when the complainant went to present the cheque to the Bank on 18-2-1997, both the applicants are said to have told him that as they did not have sufficient funds on that date, the cheque should be presented subsequently. However, on 10-7-1997 when the cheque was again presented, the same was returned to the complainant with the bank's endorsements that the payment was being refused as there was an instruction to 'stop payment, by drawer' and due to 'insufficient funds.' The complainant sent notices on the permanent address of the applicants with a copy to the office address of the applicants'-firm by registered post on 16-7-1997 and 19-7-1997. While the notices sent at their residence address were not taken by the applicants, however, the registered A.Ds. of the notices sent at the firm's address were received back by the complainant, which were annexed with the complaint. As the payments were not made despite the notices under Section 137 of the Negotiable Instruments Act, hence the complaint was filed on 20-8-1997. After examining the complainant and witnesses under Ss. 200 and 202, Cr. P.C. and perusing the other records, the learned A.C.J.M. 1st, Muzaffar Nagar has summoned the applicants under Section 138 of the Negotiable Instruments Act. After the summoning order, the objections filed by the applicants were also dismissed by the order passed by the 1st Additional C.J.M., Muzaffar Nagar on 16-5-1998 and the Criminal Revision No. 58 of 1998 against the aforesaid order was also dismissed by the learned Sessions Judge, Muzaffar Nagar on 20-7-1997.

3. It has been contended by the learned counsel for the applicants that the complainant was not entitled to receive the money, as she had given an

undertaking before the Rajasthan State Industrial Development and Investment Corporation Ltd. (RIICO) to enable the applicants'-company to obtain a loan of Rs. 150 lacs. Under this undertaking she was not entitled to withdraw Rs. 4,37,000/-, which she had advanced to the applicants'-firm as an unsecured loan from getting the aforesaid advance from the RIICO, the applicants have even filed certain documents executed by the complainant to this effect.

4. In this connection, Section 138 of the Negotiable Instruments Act provides that a person is liable for prosecution, if any cheque issued for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, or the credit of that account is insufficient or it exceeds the amount arranged for and 'debt or other liability' under the Explanation to the aforesaid section 'means a legally enforceable debt or other liability.' The applicants themselves admit that they have obtained a loan from Smt. Laxmi Garg, the complainant. However, they have stated that in view of the complainant's undertaking before the RIICO, there was no enforceable liability on the applicants to pay the aforesaid amount. It is notable that the explanation mentions enforceable debt or other liability. Furthermore, it has been clearly mentioned by the Apex Court in the case of *M.M.T.C. Ltd. v. Medical Chemicals and Pharma (P) Ltd.*, reported in 2002 SCC (Cri) 121 : (AIR 2002 SC 182 : 2004 Cri LJ 266) that even when the complainant does not allege existence of subsisting debt or liability against which the cheque was issued, the burden of proving the non-existence of any debt or liability is on the accused, which can only be discharged at the trial and prior to that stage, the complaint cannot be quashed by the High Court under Section 482, Cr. P.C.

5. The second contention raised by the learned counsel for the applicants was that in this case, the company had not been impleaded as an accused and the applicants were only the Directors of the registered company namely Messrs. Bhagyodya Steels (P) Ltd. It has clearly been held by the Apex Court in the case of *Anil Hada v. Indian Acrylic Ltd.*, reported in 2001 SCC (Cri) 174 : (AIR 2000 SC 145 : 2000 Cri LJ 373) that simply because the company is not prosecuted as a result of some legal impediment, the accused persons cannot escape penal liability. So far as the applicant-Jagmohan was concerned, he was clearly the signatory of the disputed cheque and hence, and he is directly liable for issuance

of the cheque. So far as the other applicant-Smt. Kamlesh Singhal is concerned the allegations were that when the complainant tried to get the cheque of Rs. 3,00,000 encashed on 18-2-1997 both the applicants met her, and dissuaded her from encashing the cheque immediately as both of them claimed to lack funds at that time, leading to the presentation of the cheque subsequently when it was dishonoured in the circumstances abovementioned. In the objections filed by the applicants to the summoning order, it was also not stated anywhere that the role of applicant-Smt. Kamlesh was different or that she could not be saddled with any liability for the offence. In this view of the matter, on this ground, the prosecution under Section 138 of the Negotiable Instruments Act cannot be quashed at this stage. Of course it will be open for the applicant to lead any evidence at the trial of the case showing that there was no existent liability on the applicant for making payment of the cheque in dispute. The case of a single Judge of Punjab and Haryana High Court in Raj Kumar Mangla v. Indo-Lowenbrau Breweries Limited, reported in 1998 Cri LJ 332 is clearly distinguishable as in that case, the allegations were against the party concerned and there were no specific allegations against the accused. Whereas, in the present case, there are specific allegations against both the applicants for not discharging the liability on the presented cheque, and the circumstances of its presentation.

6. The next submission raised by the learned counsel for the applicants was that notice has not been served on the applicants. In this respect, although, the applicants had succeeded in avoiding to take the notices, which were sent at their residence and there was an endorsement of the postman that on repeated visits he met no one. However, the registered, A.D. of the notice sent to the address of the applicants'-company had clearly been received and the acknowledgment had been received by the complainant. This fact is mentioned in the complaint itself. Further in the case of K. Bhaskaran v. Sankaran Vaidhyan Balan, reported in 1999 SCC (Cri) 1284 : (AIR 1999 SC 3762) it has been held that where a notice has been dispatched by post at the correct address, such notice shall be deemed to have been served on the sendee, unless the sendee proves that it was not really served and that he was not responsible for such non-service. This is based on an interpretation of Section 27 of the [General Clauses Act, 1897](#). Therefore, the onus lies on the applicants to show at the trial that they have not received notice and

also that they were not responsible for the non-service of the same. At the stage when an application under Section 482, Cr. P.C. is being considered, this plea of the applicants cannot be considered.

7. The last contention raised by the applicants was that the notice mentioned a higher amount than Rs. 3 lacs, as it also mentioned an amount of Rs. 1200/- by way of counsel fee and cost of notice, hence no prosecution of the applicant would lie. For this proposition, the learned counsel for the applicant relied on a single Judge decision of Calcutta High Court in the case of Gopa Debi Ozha v. Sujit Paul, reported in 1995 Cri LJ 3412. In that case the amount claimed in the notice was Rs. 6,50,000/-, the complaint had been made for a sum of Rs. 5,79,000/- as such the notice was considered vague and devoid of particulars and the single Judge of the Calcutta High Court held that the said notice could not be sustained in law. However, in the present case, there is no vagueness or illegality, as a specific amount of Rs. 3 lacs has been mentioned in the notice under complaint. Simply because a liability of Rs. 1200/- was also added as costs and counsel's fee, does not make the notice vague or lacking in particulars.

8. In this view of the matter, there is no force in these applications under Section 482, Cr. P.C. which are dismissed and the stay order granted on 21-8-1998 is vacated. As the proceedings in this case have remained stayed for long time, the trial Court is directed to conclude the trial of this case within six months, if possible. In case, the applicants appear within one month and apply for bail, (provided they have not obtained bail already) the same shall be disposed of expeditiously by the Court below.

9. With these observations, these applications are dismissed.

10. The trial Court may decide the trial on merits without being influenced by the observations made above in this judgment while disposing of these applications under Section 482, Cr.P.C.