

Alfa Graphics Vs. Arjun Kohli

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Court : Delhi

Decided On : Feb-07-2008

Reported in : II(2008)BC559; 148(2008)DLT373; 2008(101)DRJ301

Judge : S. Muralidhar, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138, 141 and 141(1); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 219, 305 and 482; [Indian Penal Code 1860](#) - Sections 379, 380 and 420; [Income Tax Act 1961](#); Central Excises Act 1944; [Partnership Act 1932](#)

Appeal No. : Criminal M.C. No. 4259/2006 and CrI. M.A. 7268/2006

Appellant : Alfa Graphics

Respondent : Arjun Kohli

Advocate for Def. : S.C. Singhal, Adv.

Advocate for Pet/Ap. : Sandeep Sethi, Sr. Adv.; T.S. Sidhu an; Divya Jain, Advs

Disposition : Petition dismissed

Judgement :

ORDER

S. Muralidhar, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr PC') seeking the quashing of the proceedings arising out of the complaint case No. 877/1/2006 titled Arjun Kohli v. Alfa Graphics pending in the court of the learned Metropolitan Magistrate ('MM'), Delhi. The complaint has been filed by the Respondent against the Petitioner for the offence under Section 138 read with Section 141 of the [Negotiable Instruments Act, 1881](#) ('NI Act') and Section 420 of the [Indian Penal Code 1860](#) ('IPC').

2. The only accused person shown in the complaint is as under:

M/s Alfa Graphics

7, Neelkanth Apartment,

Gokuldas Pasta Road,

Dadar, East Mumbai

(Through its Partner).

3. Para 3 of the complaint lists out 20 cheques drawn by the Petitioner M/s. Alfa Graphics in favor of the complainant Respondent in the aggregate sum of Rs. 2,26,240.00. It is stated that each of the cheques when presented by the complainant to the bank for payment was returned dishonoured on account of 'insufficient funds'.

4. The learned MM directed issuance of summons requiring the appearance of the Petitioner before him on 30th May 2006 to face trial for the offence under Section 138 NI Act. The present petition was filed on 24th July 2006. By an order dated 26th July 2006 an interim order was passed exempting the Petitioner's representative from personal appearance subject to appearing through counsel before the trial court.

5. Mr. Sandeep Sethi, learned Senior Counsel appearing for the Petitioner urges two points in support of the prayer quashing of the criminal complaint. The first is that the Petitioner is a partnership firm and has been arrayed as an accused without indicating the name of the partner. He submits that in terms of Section 141

NI Act read with the Explanation (a) thereto unless a partner of the firm is also named as an accused and it is specifically averred that such partner was in charge of the affairs of the firm and responsible to it for the conduct of its business, no liability whatever can attach to the firm. A reference has also been made to the decision of the Supreme Court in *Monaben Ketanbhai Shah v. State of Gujarat* : 2004 CriLJ4249 . Secondly, it is urged that there cannot be one complaint for as many as 20 cheques. A reference has been made to Section 219 Cr PC to contend that no person can be charged and tried at one trial for more than three offences of the same kind committed within the space of twelve months.

6. In order to appreciate the first contention a reference may be made to both Sections 138 and 141 NI Act which read as under:

Section 138 Dishonour of cheque for insufficiency, etc. of funds in the account - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) The cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation - For the purposes of this section, 'debt or other liability' means a legally enforceable debt or other liability.

Section 141 Offences by companies-

(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in Sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purposes of this section-

(a) 'company' means any body corporate and includes a firm or other association of individuals; and

(b) 'director', in relation to a firm, means a partner in the firm.

7. The Explanation to Section 141 makes it clear that wherever there is a reference under Section 141 to a 'company' it has to be substituted by the word 'firm' where the accused is a partnership firm and the provision has to be read as if it refers to the firm. What this means is that a complaint can be filed for the offence under Section 138 NI Act not only against the partnership firm on whose behalf the cheque was issued but also against an individual partner or person who, at the time of the commission of the offence, was in charge of the affairs of the firm or responsible to it for the conduct of its business. There is nothing in the provision which indicates that in every complaint involving the dishonour of a cheque issued by a firm both the firm as well as its partners have to be compulsorily impleaded. In other words a complaint in which only the firm is made an accused and the partners are not would not be bad in law for that reason. Clearly that is not the intention of the Parliament.

8. A partnership firm is a separate legal entity in terms of the Indian [Partnership Act 1932](#) and it is answerable in law in that capacity. That is how under various statutes like the [Income Tax Act 1961](#), the Central Excises Act 1944, the Sales Tax Laws and Section 141 NI Act, a firm can be proceeded against as such. It is perfectly possible for a complainant, aggrieved by the dishonour of a cheque issued by or behalf of a firm, to file a complaint for the offence under Section 138 NI Act only against the firm. The complainant may choose not to proceed against the individual partners as accused either because he is not aware as to who are the partners or is not interested in proceeding against the partners apart from the firm. When the firm receives the summons, it would naturally appoint or authorize some one to represent the firm in the proceedings before the court. It is not open to a firm that is issued summons to contend that it does not have to appear in the proceedings because the complaint does not also arraign the partner or partners of the firm as co-accused. A comparison could be drawn with Section 305 Cr PC which requires a company which is summoned to appear as an accused in a

criminal proceeding to indicate who will appear on its behalf. A company cannot possibly contend that although it has been named as an accused it need not participate in the proceedings only because the person in charge of the affairs of the company at the time of commission of the offence has not been named as accused.

9. The judgment of the Supreme Court in *Monaben Ketanbhai Shah v. State of Gujarat* was dealing with a situation different from the one in the present case. There the firm as well as its partners were sought to be arraigned as accused. The Supreme Court held that the complaint should contain a specific averment as to the role of each of the partners and in particular that they were in charge of the affairs of the firm and responsible to it for the conduct of its business at the time of the commission of the offence. Here that question does not arise since the firm alone is arraigned as an accused. thereforee the first submission of the learned Senior Counsel for the petitioner is rejected.

10. Turning to the next submission regarding one complaint being filed for as many as 20 dishonoured cheques, a reference may be made to Section 219 Cr PC which reads as under:

Section 219 Three offences of same kind within year may be charged together-

(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local laws:

Provided that, for the purposes of this section, an offence punishable under Section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under Section 380 of the said Code, and that an offence punishable under any section of the said Code, or of

any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

11. The purport of the above provision is that where a person is accused of more than one offence of the same kind committed within the space of twelve months he can be charged 'and tried at one trial for, any number of them not exceeding three.' The stage for determining whether there should be more than one charge and therefore more than one trial has not yet been reached. That will be decided at the appropriate stage by the learned trial court as and when charges are framed. This issue should therefore be appropriately addressed to that Court. The mere reference in the complaint to 20 cheques as having been dishonoured cannot render the complaint bad in law or not maintainable. The order of the learned MM issuing summons also does not get invalidated on that score. The second submission of learned Senior Counsel for the Petitioner is also rejected.

12. Accordingly, this petition is dismissed with no orders as to costs. The interim order granted on 26th July 2006 stands vacated and the application stands dismissed. A certified copy of this order be sent to the court of the learned MM in whose court complaint case No. 877/1/2006 titled Arjun Kohli v. Alfa Graphics is pending within five days.

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