Mona Modi Vs. State and anr.

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Court : Delhi

Decided On : Jul-06-2009

Reported in : 161(2009)DLT110

Judge : S. Muralidhar, J.

Acts : Negotiable Instruments Act 1881 - Sections 138; Code of Criminal Procedure (CrPC) , 1973 - Sections 156(3), 227 and 482; Indian Penal Code (IPC) - Sections 34, 378, 380, 464, 467, 468 and 471

Appeal No. : Crl. Rev. P. 345/2008 and Crl. MA. 9033 of 2008

Appellant : Mona Modi

Respondent : State and anr.

Advocate for Def. : Jaideep Malik, APP and ; Vikas Arora and ; Aman Khan, A

Advocate for Pet/Ap. : Jayant Bhushan, Sr. Adv.,; Ajay Bhargava and; Neeraj Chaudh

Disposition : Petition allowed

Judgement :

S. Muralidhar, J.

1. The challenge in this petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr PC) is to an order dated 8th May 2006 passed by the learned Metropolitan Magistrate (MM), New Delhi discharging Respondent No. 2 in FIR No. 522/2003 under Sections 380/464/468/471 read with 34 IPC registered at P.S: Kalkaji.

2. The petitioner Mona Modi was for a short while the Director of Parakram Technofab Ltd. (PTFL). She resigned in April 1999. PTFL was engaged in the business of trading and exporting of textile fabrics. The Respondent No. 2 Mukesh Gupta was also a Director of PTFL from 20th June 1996 to 1st July 1997. It is the case of the petitioner that Aditya Modi and her husband Rajiv Modi were also Directors of PTFL. She had a savings bank account No. 2679 with State Bank of India (SBI), Greater Kailash Part-II Branch, New Delhi. It is her case that used to keep some signed blank cheques with her husband at the head office of PTFL for dealing with financial emergencies.

3. Reuben Solomon was the Managing Director of Butedean Ltd. and Codev Textiles Ltd. both located at Manchester in England, engaged in the business of trading and import of textile fabrics. Reuben Solomon was a business associate of PTFL and it was on his recommendation that Mukesh Gupta, Respondent No. 2 was made a Director of PTFL.

4. According to Mona Modi by a letter dated 2nd June 1999 addressed to the SBI she closed her savings account No. 2679. She consequently surrendered her cheque book. She also informed the SBI by the said letter that she was unaware of the fate of two cheque Nos. 500703 and 500707 which were not traceable. On 9th June 1999 she also sent a written communication to the Station House Officer (SHO) of the Kalkaji Police Station for registering a complaint about the missing cheques. She also enclosed with the said complaint a copy of her letter dated 2nd June 2009 to the SBI closing her savings account.

5. On 3rd December 1999 Mona Modi received a letter from the GK Branch of the SBI informing her that a cheque No. 500707 for a sum of Rs. 40 lakhs had been received through Deutsche Bank Ltd. for clearance and that it had been returned by the SBI with the noting 'account since closed'. In the month of December 1999

a notice was received by Mona Modi from the Advocate for Reuben Solomon regarding the dishonour of the cheque No. 500707. It was claimed in the said notice that the cheque had been issued in the sum of Rs. 40 lakhs towards the discharge of liability of the PTFL towards Butedean Ltd. and Codev Textiles. The complainant was called upon to make the payment of Rs. 40 lakhs to Reuben Solomon failing which criminal proceedings under Section 138 of the Negotiable Instruments Act 1881 (NI Act) would be initiated. The said notice was replied by the lawyer of Mona Modi and her husband Rajiv Modi on 6th January 2000 stating that the said cheque had been found missing by Mona Modi at the time of closing her savings account with the SBI; that the said cheque was never issued for any amount in favour of Reuben Solomon and therefore it was obviously a stolen cheque which was subsequently filled up and presented to the SBI.

6. In January 2001 Reuben Solomon through his power of attorney filed Criminal Complaint Case No. 3991/1 of 2004 titled 'Reuben Solomon v. Parakram Technofab Ltd. and Ors.' in the Court of the learned Metropolitan Magistrate (MM) New Delhi. By an order dated 31st January 2001 the learned MM summoned inter alia Mona Modi for the offence under Section 138 NI Act. By an order dated 27th October 2004 the learned MM dismissed the application filed by the accused for recalling of the summoning order. Aggrieved by the said order, Mona Modi filed Crl.M.C. No. 3033 of 2004 in this Court.

7. On her part, Mona Modi filed a complaint along with an application under Section 156(3) Cr PC in the Court of the learned MM on 21st January 2003. This was under Sections 378/380/464/468/471 IPC read with 34 IPC. Along with the complaint a report of the handwriting expert was enclosed which showed that Mukesh Gupta had himself filled up the stolen cheque No. 500707 in his handwriting. It was prayed that a direction should be issued to the PS Kalkaji to investigate the offence. Consequent upon the directions issued by the learned MM an FIR No. 522/2003 registered at PS Kalkaji and the cognizance of the offence was taken against Mukesh Gupta by the learned MM by the order dated 13th April 2005. Aggrieved by this order Mukesh Gupta filed Crl. MC. No. 4122 of 2005 in this Court.

8. The petition by Mona Modi being Crl.MC. No. 3033/2004 and the petition by Mukesh Gupta being Crl.MC No. 4122 of 2005 were heard together and disposed of by the order dated 21st February 2008. This Court was informed that in FIR No. 522 of 2003 charges were yet to be framed and the trial was yet to commence. Consequently the following order was passed in both the cases:

15. Keeping in view the above facts and circumstances these two petitions are disposed of by directing as under:

(a) The learned ACMM New Delhi will now place both the criminal case arising out of FIR No. 522/2003 and Criminal Complaint Case No. 391/1 of 2004 titled 'Reuben Solomon v. Parakram Technofab Ltd.' before the same MM.

(b) The learned MM will proceed to hear argument and pass an order on charge in FIR No. 522/2003 on or before 31st March 2008.

(c) The trial if any in FIR No. 522/2003 should be completed within six months thereafter, or on or before 1st October, 2008 whichever is later. The six months. period would exclude the period during which any interim order, if any, passed by the revisional court, subsists.

(d) After the conclusion of the trial and the judgment in FIR No. 522/2003 further proceedings in Criminal Complaint Case No. 391/1 of 2004 should commence. Till then the trial in Criminal Complaint Case No. 391/1 of 2004 shall remain stayed.

9. By the impugned order dated 8th May 2008, the learned MM discharged Mukesh Gupta of the offences in FIR No. 522/2003. In the said order it was noticed that the police investigated the case after registering the FIR. The police opined that prima facie the offences under Sections 380/467/468/471/34 IPC were made out against Mukesh Gupta and that he had committed the offence under Section 380 IPC in connivance with Reuben Solomon. As regards Reuben Solomon since his whereabouts were not known and he was stated to be in the UK, his name was placed in Column 2. The prosecution reserved to itself the right to file a supplementary charge sheet. According to Mukesh Gupta he was the power of attorney holder of Reuben Solomon, who was the Managing Director,

Butedean Ltd. and Codev Textiles Ltd. It was stated that by Invoice Nos. 152 and 152A dated 8th March 1997 PTFL sent fabrics to Butedean Ltd. and Codev Textiles which were cleared against full and final payment. However, the entire lot on arrival in England was found to be defective. The matter was brought to the notice of the Directors of PTFL and the goods were sent back to India. It is claimed that Directors PTFL agreed to take the goods back and also pay compensation. In June 1998 goods were sent back to India against two bills dated 23rd March 1998 and 1st June 1998. However, the bills were not settled by PTFL or its Directors. Reuben Solomon the Managing Director of Butedean Ltd. and Codev Textiles Ltd. was authorized to collect the debt. It was alleged that a settlement was arrived at between the parties in February 1999 and a post-dated cheque No. 500707 dated 3rd November 1999 was issued by Mona Modi in favour of Reuben Solomon in the sum of Rs. 40 lakhs. A cheque when presented by Reuben Solomon through his bank was dishonoured with the remarks 'account closed'.

10. The learned MM held that the Mona Modi could not be held to be in possession of the dishonoured cheque as she had stated that she handed them over to her husband and her brother-in-law. There was no explanation why she had not earlier made a complaint about cheques Nos. 500703 and 500707 being missing. There was no explanation why the PTFL had written the letter dated 18th February 1999 to its banker stating that the payment ad been postponed to some future date. Therefore, there was a doubt about the case of the complainant that there was no liability of PTFL towards the UK company and definitely not to the extent of Rs. 40 lakhs. The learned MM then proceeded to analyze the statement of accounts of Mona Modi and reasoned that when the balance was never more than the Rs. 1000/- there was no utility in keeping the blank cheques with the PTFL for financial 'exigencies'. Therefore, this explanation by Mona Modi was doubted. Applying the judgment of the Supreme Court in Union of India v. Prafulla Kumar Samal : 1979 CriLJ154 it was held that the benefit of doubt should go the accused. Accordingly the respondent Mukesh Gupta was discharged. It is submitted that the complainant gave a representation to the Director of Prosecution for filing a revision petition. When the latter failed to take any action, the present petition was filed. By an order dated 31st July 2008, the impugned order dated 8th May 2008 passed by the learned MM was stayed by this Court.

11. It is submitted by Mr. Jayant Bhushan, learned Senior Counsel appearing for the petitioner that the learned MM grievously erred in discharging the accused. At the present stage, the learned MM was not expected to analyze the evidence in great detail to test its veracity. He referred to the decisions in Union of India v. K.K. Pradhan : 1987 CriLJ709 and Sanghi Bros. (Indore) (P) Ltd. v. Sanjay Choudhary : 2009 CriLJ338 . He submitted that Mukesh Gupta gave a statement in writing to the police that the cheque had in fact been filled up in his handwriting. Documentary evidence was also filed by the Reuben Solomon to the effect that the cheque had been filled up in the name of the company by Mukesh Gupta. Further the invoice against which the payment was supposed to have been made was in the sum of Rs. 15 lakhs whereas the cheque amount was Rs. 40 lakhs. The learned MM also failed to appreciate that there was no occasion for Mona Modi to issue a cheque in discharge of liability of PTFL when she had by then already resigned from the directorship of the said company. The learned MM also completely ignored the fact that she had in June 1999 informed both the SBI and the police of the loss of the cheques. Therefore, it was not as if the theft of the cheque was an afterthought. The fact that Mukesh Gupta was in possession of the cheque was evident from the fact that he acted as the agent of the Reuben Solomon and presented the cheque for payment. It was submitted that the order of the learned MM was based purely on surmises and conjectures and ought to be set aside.

12. Appearing for the respondents it is submitted by Mr. Vikas Arora, the learned Counsel for the Respondent Mukesh Gupta that Reuben Solomon himself had confirmed that Mona Modi issued a cheque to meet the liability of the PTFL. When she herself stated that she left the cheques with her husband for meeting financial liabilities of the company, she could not wriggle out from the liability of PTFL towards the discharge of which she had issued the cheque. It is submitted that the learned MM was justified in coming to the conclusion that the evidence adduced by the complainant Mona Modi was wholly unbelievable. When there was no balance in the closed saving bank account clearly the accused had never any intention in making payment. The cheque was issued knowing fully well that it would be dishonoured when presented for payment. The complaint case was filed by Mona Modi only in January 2003 much after the complaint filed against her

under Section 138 NI Act. This complaint was therefore malafide. The explanation for the cheque being issued in the sum of Rs. 40 lakhs was that there was a settlement between the parties and it was agreed that the amount payable would include the total of the cost of goods as well as the handling charges, godown charges, customs, damages etc.

13. The submissions of the learned Counsel have been considered. The scope of the proceedings before the learned MM at the stage of charge was only to examine if a case of grave suspicion was made out against the accused for the offences for which he was sought to be proceeded against. The court was not expected to analyze the evidence in great detail to ascertain if the accused could be held guilty of the offence beyond reasonable doubt. The Supreme Court has in Prafulla Kumar Samal explained the scope of the powers of the trial court under Section 227 Cr PC as under (SCC, p.7):

The words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

14. Likewise in Sanghi Bros. (Indore) (P) Ltd. v. Sanjay Choudhary : 2009 CriLJ338 it was observed that 'The court has to see while considering the question of framing the charge as to whether the material brought on record could reasonably connect the accused with the trial. Nothing more is required to be inquired into.'

15. In the instant case the cheque in question was purportedly issued by Mona Modi in her personal capacity and not as a Director of PTFL. Clearly it is not the case of the accused that the cheque was issued by PTFL in discharge of its liability. However, the liability sought to be enforced is that of PTFL towards Codev Textiles Ltd. It is also significant that the cheque was not issued in favour of Codev Textiles Ltd. which raised the invoice. It was issued in the individual name of Reuben Solomon. This prima facie probalises the case of Mona Modi that the cheque was not issued towards the discharge of the liability of the PTFL towards Codev Textiles Ltd. However, according to Mukesh Gupta this was the transaction which led to the issuance of the dishonoured cheque. The explanation why the cheque was in the sum of Rs. 40 lakhs while the liability in terms of the invoice in question was Rs. 15 lakhs has to be tested by leading evidence. Likewise there is merit in the contention of the learned Senior counsel for the petitioner that the statement made by Mona Modi to the police that she had kept some blank cheques signed in her husband's office for meeting financial 'emergencies' has been wrongly read as 'exigencies' by the learned MM. She clearly mentions that the said two cheques, i.e., 500703 and 500707 were found missing and that she gave a complaint to this effect to the police and also informed the bank likewise while closing her savings account. She specifically alleged that Mukesh Gupta had dishonestly removed the blank cheques from the head office and in conspiracy with the Reuben Solomon filled up the cheque in question in his own handwriting. She also enclosed the report of the handwriting expert. This report is also on record.

16. Much is sought to be made by the learned Counsel for the respondent of the replies given by Mona Modi to the questions raised by the police. One of the questions was 'how many time blank cheques were kept in the office and how many had been used?' The answer was: 'One signed blank cheque was always kept in the office. On the same being used another would be got signed from me.' From this it is sought to be contended that the complainant was changing her versions from time to time. She had stated that the two blanks cheques were missing and now she stated that the one cheque was missing. In the considered view of this Court there is no apparent material contradiction in this reply. It must be remembered that cheque Nos. 500703 and 500707 were missing which

perhaps the complainant did not notice immediately. Thereafter, two cheques were issued. Thereafter one more signed cheque was found missing. It is possible that the complainant noticed the missing cheques only when the statement of account was seen by her. Nothing much therefore turns on these replies. In any event a clearer picture about the veracity of these statements can emerge only after evidence is led.

17. There was another question asked to her why she would sign cheques twice. She replied that she was not confident of her signature and therefore on the advice of her husband she would sign twice on the cheque. The version of Reuben Solomon is that the cheque was signed in the presence of his agent once, when in fact a perusal of the dishonoured cheque shows that it was signed by her twice. It appears to this Court that these issues ought not to be decided at the stage of charge as evidence would have to be led to determine the truth of either of these rival contentions. The unanswered questions emerging from a perusal of the record at this stage cannot result in the accused being discharged. The appropriate course would be for the trial court to postpone answering the questions to the stage after the conclusion of evidence. In the considered view of this Court, the materials on record at this stage are sufficient to draw a strong suspicion against the respondent for commission of the offence and therefore the case should proceed against him by framing charges for the offences as stated in the complaint.

18. Accordingly, the impugned order dated 8th May 2008 passed by the learned MM is hereby set aside. It is held that the case of grave suspicion is made out against Mukesh Gupta for the offence under Sections 380, 464, 467, 471 read with 34 IPC. The matter will now be placed before the learned MM for framing of charges. In the light of the order passed by this Court on 21st February 2008 in Crl.MC. No. 3033/2004 and 4122 of 2005 it is requested that the trial court should make every endeavour to conclude the trial and pass final orders in the case arising out of FIR No. 522/2003 within a period of one year and in any event not later than 31st July 2010.

19. The petition stands allowed and disposed of in the above terms. The trial court record be returned forthwith together with a certified copy of this order. The case will now be listed before the concerned trial court on 3rd August 2009 for further proceedings. The stay granted by the order dated 31st July 2008 by this Court stands vacated and the application stands disposed of.