

Apollo Fin. and anr. Vs. State and anr.

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Court : Delhi

Decided On : Sep-04-2002

Reported in : 2003(1)ALT(Cri)9; I(2003)BC253; 100(2002)DLT753; 2003(66)DRJ488

Judge : Mahmood Ali Khan, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138

Appeal No. : Crl. R. No. 388 of 2002

Appellant : Apollo Fin. and anr.

Respondent : State and anr.

Advocate for Def. : O.P. Saxena, APP

Advocate for Pet/Ap. : M.K. Dua, Adv

Disposition : Petition dismissed

Judgement :

Mahmood Ali Khan, J.

1. This revision petition is directed against an order of the Additional Sessions Judge dated 21.3.2002 whereby he has rejected an application of the petitioner for recalling the summoning order and discharging the petitioner in a criminal

complaint instituted by the respondent for his prosecution for offence under Section 138 of the Negotiable Instruments Act (in short the Act).

2. The contention of Counsel for petitioner is that petitioner No. 2 Abha Gorawara is the sole proprietress of petitioner No. 1 concern and that the cheque which is the foundation for launching prosecution under Section 138 of the Act does not bear her signature. It is further contended that even otherwise Sharad Gorawara and Puneet Gorawara with whom the respondent had dealings have already repaid Rs. 25,00,000/- to the complainant.

3. The respondent sought prosecution of the two petitioners for commission, of offence under Section 138 of the Act on the averment that in September 1996 Sharad Gorawara and Puneet Gorawara, partners of M/s. Gorawara and Co., share broker in Delhi Stock Exchange, and also Directors of M/s. Gorawara Financial Services Pvt. Ltd., offered to arrange inter-corporate deposit (ICD) of 90 days maturity in a reputed company Apollo Tyres Ltd. The respondent gave three cheques of the total value of Rs. 25,00,000/- all dated 3.10.1996. In December, 1996 Sharad Gorawara and Puneet Gorawara gave the respondent a cheque dated 1.1.1997 for Rs. 25.00 lacs in discharge of the liability created by inter-corporate deposit. Later it was discovered that the amount of Rs. 25.00 lacs which was given for depositing in Apollo Finance of Apollo Tyres Ltd. of Raunaq Group the amount was deposited in the bank account of petitioner No. 1, of which respondent No. 2 was the proprietress. The cheque dated 1.1.1997 on presentation was dishonoured by the banker of the petitioners. Since the amount was received by the petitioners, therefore, the cheque in question was also issued for repayment of the amount by the petitioner accused. The petitioner, therefore, committed offence under Section 138 of the Act besides committing offence of cheating.

4. The petitioner filed application for recalling the summoning orders primarily on the ground that the cheque was not signed by petitioner No. 2, therefore, one of the essential ingredients of the offence under Section 138 of the Act did not exist so the petitioner could not be made liable for the offence within the purview of that section.

5. Counsel for petitioner has argued that for an offence under Section 138 of the Act it is essential that the cheque should have been drawn by the drawer at his own account and it should be dishonoured on presentation to his banker for insufficiency of fund or exceeding the arrangement made. It is strongly contended that in the instant case the cheque does not bear the signature of petitioner No. 2, who is the sole proprietress of petitioner No. 1 firm, therefore, offence has not been made out. He wanted the Court to make visual comparison of the attested signature of the petitioner No. 2 sent by the bank with the signature appended on the disputed cheque and argued that both these signatures are dissimilar. This argument did not find favor with the learned Trial Court and it has rejected it observing that this question may be decided only after evidence. I am in full agreement with the view of the Additional Sessions Judge.

6. There is a clear allegation made in para 6 of the criminal complaint filed by the respondent that the cheque was issued by the petitioner accused for making payment of the amount of Rs. 25.00 lacs which was deposited in their account. The question whether the cheque bears the signature of petitioner No. 2 or not are the questions which could be decided only after the case goes into trial and evidence is recorded. Interestingly, Counsel for petitioner has not denied that the cheque was drawn on the bank account of petitioner No. 1, of which the petitioner No. 2 is the sole proprietress. She has only disputed the signature on the cheque. It is also not denied that the cheque in question was dishonoured by the bank for insufficiency of fund in the account and not difference in the signature of drawer of the cheque. At this stage Trial Court could not have decided this disputed question on bald allegation of the petitioner or examining the signature appearing on the disputed cheque and attested signature himself.

7. I do not find any impropriety or illegality in the order dated 21.3.2002 of the Trial Court impugned in this petition. The petition has no merit. It is dismissed.

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