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Silkways Travels Pvt. Ltd. and ors. Vs. State and anr.

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Court : Delhi

Decided On : Dec-02-2005

Reported in : I(2006)BC343(NULL)

Judge : J.P. Singh, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138 to 142 and 143(3); Negotiable Instruments (Amendment) Act, 2002; Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988; Code of Criminal Procedure (CrPC) - Sections 251 and 482; Indian Penal Code (IPC) - Sections 211

Appeal No. : CRLMC 6101, 6102, 6103 and 6104/2005 and CRLM 11855/2005

Appellant : Silkways Travels Pvt. Ltd. and ors.

Respondent : State and anr.

Advocate for Pet/Ap. : Ramesh Gupta and; Bharat Sharma, Advs

Disposition : Petition dismissed

Judgement :

ORDER

J.P. Singh, J.

1. This petition under Section 482 Cr.P.C. has been filed for quashing the order dated 3.12.2001 passed by learned Metropolitan Magistrate, New Delhi summoning the petitioners under Section 138 Negotiable Instruments Act, and also for quashing the order dated 25.10.2005 regarding notice under Section 251 Cr.P.C. given to the petitioners.

2. I have heard Mr. Ramesh Gupta, learned counsel for the petitioners, on the point of admission, and have gone through the copies of the documents placed on the file.

3. Vide order dated 3.12.2001, the learned Metropolitan Magistrate after examining the affidavit evidence of the complainant opined that there was a prima facie case under Section 138 of Negotiable Instruments Act and issued summons. Vide order dated 25.10.2005, accused Nos. 2, 5 and 6 were declared proclaimed offenders (PO's) and notices under Section 251 Cr.P.C. were given to other persons who pleaded not guilty and the matter has been adjourned to 31.1.2006 for evidence by way of affidavits. Aggrieved, the present petition has been filed by accused Nos. 1, 3, 4 and 7.

4. Briefly the facts are that petitioner No. 1 was agent of the complainant under the Passenger Sales Agency Agreement. The petitioners issued cheque for the sum of Rs. 31,95,472/- in discharge of their liability towards the complainant for the sale of Air tickets. The cheque was dishonoured. The petitioner is said to have given bank guarantee of Rs. 15.00 lakh as per terms of the Agreement. The said amount of guarantee was forfeited and encased by the complainant and the complainant again presented the cheque. The cheque was dishonoured.

5. The petitioners are already admitted to bail but they claim that the balance amount after deduction of security/Bank guarantee is only about 16.00 lakh whereas the claim of the complainant continues to be of the cheque amount. Several annexures have been filed in support of this contention. I am of the view that this may be a good defense of the petitioners or some of the petitioners but they have to raise this defense before the trial court while cross examining the complainant's witnesses and thereafter at the time of giving their defense.

6. On mere allegations of the petitioners, it cannot be said by this court that the amount due is only Rs. 16 lacs. The parties will establish in the trial court as to what amount is due and the trial court will decide the effect of the finding regarding this aspect, on the main judgment. Proviso to Section 141 of Negotiable Instruments Act gives opportunity to the accused persons to present their defense.

7. In view of the above discussion, in my opinion, under section 482 Cr.P.C. this court cannot scrutinize the evidence, which is yet to come on record of the trial court.

8. Learned counsel for the petitioners has submitted that the complaint is false and the petitioners have been imp leaded with ulterior motives. It now stands established as to how, when and who can be imp leaded in matters regarding dishonour of cheques. (SMS Pharmaceuticals Ltd. v. Neeta Bhalla and Anr. reported in 2005 (7) SCALE.

9. In view of the established law, the complainant on its own or even the trial court can give opportunity to the complainant to voluntarily drop the accused persons who are not connected with the offence under Section 138/141 of the Negotiable Instruments Act and if the complainant opts or prays to drop some of the accused persons then in my view there is no legal bar in allowing the prayer of the complainant. But if the complainant insists and continues with the proceedings then the trial court while finally deciding the matter should pass observations or strictures for wrong implication of accused or accused persons and should proceed under Section 211 IPC or 340 Cr.P.C. as deemed fit by the trial court. The petitioners/accused persons need not rush to the High Court against every order passed during the trial under Section 138/141 of the Negotiable Instruments Act. Such approach will defeat the very purpose of the Negotiable Instruments Act. In this regard I may reproduce hereunder the amendment Act 55 of 2002 pertaining to [Negotiable Instruments Act, 1881](#):

Amendment Act 55 of 2002 - Statement of Objects and Reasons - The [Negotiable Instruments Act, 1881](#) was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to

insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions in the [Negotiable Instruments Act, 1881](#), namely sections 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the Courts to deal with such matters has been found to be cumbersome. The Courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act.

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5. The proposed amendments in the Act are aimed at early disposal of cases relating to dishonour of cheques, enhancing punishment for offenders, introducing electronic image of a truncated cheque and a cheque in the electronic form as well as exempting an official nominee director from prosecution under the [Negotiable Instruments Act, 1881](#).

10. Under Section 138 of the Negotiable Instruments Act the period of imprisonment has been extended from 1 year to 2 years. Under Section 143(3) of the Act, the trial court has to make efforts to conclude the trial within 6 months. These amendments have been incorporated to curb the delay and to highlight the gravity of the offences in which cheques are being readily given seemingly to discharge a liability or to enter into a contract, but the real intention of the drawer is either not to pay or to delay the payment or to cheat the other party. As regards exercise of powers under Section 482 Cr.P.C., the Supreme Court of India after re-examining the entire law recently held in the judgment titled *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* : 2005 CriLJ92 as under:..The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so

when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material....

11. After re-examining the amendments in the Negotiable Instruments Act, relying upon the established law on dishonour of cheques (supra) and powers of the High Court under Section 482 Cr.P.C. (supra), I do not find it a fit case for interference under Section 482 of the Cr.P.C. The petition is, therefore, dismissed. The trial court is directed to dispose of the matter expeditiously preferably within four months.

12. Nothing said herein will tantamount to expression of opinion on the merits of the case.

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