City Palace Electronics and ors. Vs. State and anr.

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SooperKanoon Citation : sooperkanoon.com/713447

Court : Delhi

Decided On : Jan-03-2006

Reported in : 126(2006)DLT324; 2006(86)DRJ741

Judge : J.P. Singh, J.

Acts : Negotiable Instruments Act, 1881 - Sections 138 to 142 and 143(3); Negotiable Instruments (Amendment) Act, 1981; Negotiable Instruments (Amendment) Act, 2002; Code of Criminal Procedure (CrPC) - Sections 340 and 482; Indian Penal Code (IPC) - Sections 211, 254 and 260 to 264; Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988

Appeal No. : CRL. M.C. Nos. 2405-07/2005

Appellant : City Palace Electronics and ors.

Respondent : State and anr.

Advocate for Def. : Siddharth Luthra, ; Rajneesh Chopra and ; Anshu Bhanat,

Advocate for Pet/Ap. : Sandeep Sethi, Sr. Adv.,; Vijay Aggarwal and; Mukesh Anand

Disposition : Petition dismissed

Judgement :
ORDER

J.P. Singh, J.

1. These petitions have been filed under Section 482 of the Code of Criminal Procedure for quashing the summoning order dated 16.11.2004 passed by Metropolitan Magistrate, Delhi and for quashing of the complaint and the proceedings emanating there from. I have heard Mr. Sandeep Sethi, Sr. Advocate, learned counsel for the petitioners, Mr. Siddharth Luthra, learned counsel for respondent and have gone through the impugned order as also copies of the documents placed on the file.

2. Briefly the facts are that M/s. Sony India Pvt. Ltd. filed a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act against M/s. City Palace Electronics Pvt. Ltd. and its Directors S. Shri Vijay Kumar Chabra, Dinesh Kumar Chabra and Rajinder Kumar Chabra. It is alleged in the complaint that accused No. 1 is a multi-brand dealer and was one of several hundred authorized dealers of the complainant. Complainant supplied its Sony and AIWA products to accused No. 1 and four running accounts were maintained. The account of Sony branded products was settled till 19.6.2004 when a sum of Rs. 8,16,935/- was credited to the account of the accused towards obsolete stock and other schemes. To settle the accounts regarding AIWA, a sum of Rs. 8,70,000/- was paid by the accused to the complainant on 7.6.2004. Further it is alleged that with a view to settle the outstandings in the Sony branded products accounts subsequent to 19.6.2004 till 14.10.2004, the accused issued the cheque bearing No. 608977 dated 14.10.2004 in the sum of Rs. 27,75,092/- drawn on Karnataka Bank, Laxmi Nagar Branch, Delhi towards discharge of legal liability in favor of the complainant. The accused No. 2 to 4 from time to time duly assured the representatives of the complainant that the cheque would be honoured upon presentation. But the cheque on presentation was dishonored with remarks payment stopped. It is alleged that the accused knew that the cheque would not be honoured and had fraudulently given it to the complainant. Statutory notice was sent but in vain.

3. In para 13 of the complaint, it is alleged that accused Nos. 2 to 4 being Directors, as such are in-charge and are responsible for the day-to-day business

of accused No. 1, hence they are liable to be prosecuted. Evidence by way of affidavit was filed with the complaint.

4. The learned Metropolitan Magistrate perused the material on record, heard arguments on the point of summoning and prima facie found that the cheque issued by the accused, in discharge of its liability in favor of the complainant had been dishonored, the amount was not paid despite notice, the complaint was within limitation period and the averments as well as documents have been perused, thereforee, a prima facie case under Section 138 Negotiable Instruments Act was made out for summoning the accused and accordingly, the accused persons were summoned vide order 16.11.2004 Learned counsel for the petitioner has vehemently argued that the complaint makes no averments as to how petitioners (Directors) are in-charge and responsible for the day-to-day affairs of the company. It is argued that the impugned cheque (No.608977) stood discharged as another cheque in lieu thereof was issued as is evident from the writing on the back side of the cheque and the correspondence on record and the cheque issued in lieu was encased by the complainant. There is also allegation that four bank cheques including the cheque in question were received by the complaint (page 25 of the paper book of both the petitions). Meaning thereby that the cheque has been fraudulently filled up much later and presented.

5. As against this learned counsel for the respondent-complainant has drawn my attention to para 13 of the complaint in which requisite averments have been made and has argued that the endorsement on the back of the cheque was stealthily fabricated by the accused persons and does not bear signatures of the complainant or any office bearers of the complainant and that right from the beginning the accused had fraudulent intentions. So much so even the rubber stamp of the complainant company on the copy of the letter is fake and false correspondence has been manufactured with a view to defeat the complaint.

6. There is no denying the fact that the petitioners Rajender Chabbra and Dinesh Chabbra are signatories of the cheque. Vijay Chabbra is alleged to be a Director. In the memo of parties, the petitioners have not even mentioned their ranks and positions in the company. Needless to say that for such transactions, a resolution

is always passed in the company and the directors are required to attend the said meetings. These meetings of the company are their internal matters. A complainant may not have easy access to the internal meetings and resolutions of the company.

7. The above facts and circumstances show that there are disputes which can be settled only by proving the documents in accordance with law either by oral, expert or other documentary evidence, which admittedly cannot be recorded or even visualized in the High Court under Section 482 Code of Criminal Procedure.

8. At this stage, I may say that the Negotiable Instruments Act was amended in the year 2002 after it was felt that the original purpose of Section 138 and other related sections of the Negotiable Instruments Act stood defeated due to prolongation of the trials on one or another pretext and the matters were being dragged on for months and years on flimsy grounds. I may reproduce hereunder some portions of the Preamble in the amended Negotiable Instruments Act:

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, 1981, 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.

Under Section 138 of the Negotiable Instruments Act, the period of imprisonment has been enhanced from 1 year to 2 years. Already there is provision for fine which may extend to twice the amount of the cheque as additional punishment for the offence. 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 delays 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. There can be fabrication on the part of the complainants as well. All these are matters of evidence in the trial court.

9. In the judgment titled B. Mohan Krishana v. Union of India reported in 1996 Cri.L.J. 638, para-29, the Andhra Pradesh High Court referred to the scope and objectives of earlier amendments, thoroughly discussed the law and held as under:-.The impugned legislation was enacted in public interest, its objective is to:- enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in certain cases while at the same time providing adequate safeguards to prevent harassment of honest drawers. As the evil practice of issuing cheques in settlement of liabilities without there being adequate amount in the accounts became rampant, the Union Parliament thought it fit to curb the same effectively by enacting a stringent law while at the same time taking care to safeguard the interests of honest drawers. An honest drawer can always avert the threat of prosecution by paying the amount due within 15 days from the date of receipt of notice from the payee on holder in due course in case the cheque issued by him was dishonoured on either of the grounds specified in

Section 138.

10. In the judgment titled Joseph Jose v. J. Baby Puthuval Puravidom Poothappu reported in 2002 Cri.L.J. 4392, para-8, the trial court had acquitted the accused for offence under Section 138 of Negotiable Instruments Act. The High Court set aside the acquittal, remanded the matter and held as under:-

The purpose behind the incorporation of Section 138 of the Negotiable Instruments Act is to lend credibility for cheque transactions. For establishing the requirements in Section 138, there is no burden on the part of the complainant to prove before Court the entire details of the transaction resulting in issuance of cheque.

11. In the judgment titled Kusum Ingots and Alloy Ltd. v. Pennar Peterson Securities Ltd. reported in : 2000 CriLJ1464 , the Supreme Court of India discussed several judgments including the application of Section 138 of Negotiable Instruments Act qua sick industrial companies and opined that criminal proceedings should not be foreclosed at the threshold (para-16) and held as under:

The object of bringing Section 138 on statue is to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments:

12. In the judgment titled Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd. reported in AIR 2001 SC 1161 the Supreme Court of CRL.M.C. Nos. 2405-07/2005 2405-07/2005 and 5970/2005 Page 9 of 13 India discussed several judgments inter alias on the point of date of presentation of cheque and the concerned bank and held as under:-

.The main object of the Negotiable Instruments Act is to legalize the system of which instruments contemplated by it could pass from hand to hand by negotiation like any other goods. The purpose of the Act was to present an orderly and authoritative statement of the leading rules of law relating to the negotiable instruments. To achieve the objective of the Act, the Legislature thought it proper to make provisions in the Act for conferring certain privileges to the mercantile instruments contemplated under it and provide special procedure in case the obligation under the instrument was not discharged.

13. It now stands established as to when, how and who can be imp leaded in matters regarding dis-honour of cheques (SMS Pharmaceuticals Ltd. v. Neeta Bhalla and Anr. reported in 2005 (7) SCALE.

14. Once the guidelines have been laid by the Supreme Court of India and the High Courts, the trial courts are bound to follow those guidelines and in the facts and circumstances of a given case, the complainant on its own or even the trial court can give opportunity to the complainant to voluntarily drop any or all of the accused persons. In my view, there is no legal bar in allowing any such prayer of the complaint. But if the complainant insists to continue with the proceedings against all or any of the accused persons then while finally deciding the matter the Magistrate may pass observations or strictures for wrong implication of all the accused persons or a particular accused and may also initiate proceedings under Section 211 Indian Penal Code or 340 Code of Criminal Procedure as deemed fit by the trial court. As regards the exercise of powers under 482 Code of Criminal Procedure I am reproducing the said section hereunder:

482. Saving of inherent power of High Court Nothing in this Code shall be deemed to limit or effect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court of otherwise to secure the ends of justice.

15. Recently, the Supreme Court of India after examining the entire case law under Section 482 Code of Criminal Procedure in the judgment titled Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque reported in : 2005 CriLJ92 has inter alia opined 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.

16. After examining the amendments in the Negotiable Instruments Act, according to which summary trial procedure is to be followed (Section 138, 143, Negotiable Instruments Act and Section 254, 260 to 264 Indian Penal Code) ; relying upon the established law regarding the dis-honour of cheques (supra) and powers of the High Court under 482 Code of Criminal Procedure (supra), I am of the view that it will be better for the petitioners to defend themselves in the trial court and if they are so sure of their defense, then they should get themselves discharged or acquitted at the earliest, rather than rushing to the High Court against every order and praying for examining the entire evidence without it being on record of the trial court, without it having been tested by cross-examination. Any such attempts will be a negation of the amendments and will defeat the very purpose of the repeated amendments.

17. Considering all the facts and circumstances, in my view these petitions are vexatious, luxury and ego litigation and the only intention is to delay the disposal of the matters in the trial court and neutralize the amendments and as such, in my view, these petitions are malafide. Precious time of the High Court has been wasted. The petitions are, thereforee, dismissed with Rs. 5,000/- (Rupees Five Thousand Only) each as costs, to be deposited with Delhi High Court Legal Services Committee, New Delhi.

18. Trial court is directed to dispose of the matters as expeditiously as possible. Nothing said herein will tantamount to expression of opinion on the merits of the cases.

19. A copy of this order be sent to Secretary, Delhi High Court Legal Services Committee, New Delhi.