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Court : Delhi

Decided On : Jan-18-2006

Reported in : 2006(1)ALD(Cri)54; [2006]132CompCas162(Delhi);
127(2006)DLT733; 2006(87)DRJ558

Judge : J.P. Singh, J.

Acts : Negotiable Instruments Act - Sections 138, 142 and 143; Code of Criminal Procedure (CrPC) - Sections 482

Appeal No. : Crl. M.C. Nos. 276-77/2006 and Crl. M.A. No. 427/2006

Appellant : Constellation Enterprises Pvt. Ltd. and anr.

Respondent : P.E.C. Limited

Advocate for Def. : Nemo

Advocate for Pet/Ap. : V.K. Shali and; Shalendra Paul, Advs

Disposition : Petition dismissed

Judgement :

ORDER

J.P. Singh, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure for quashing the summoning order dated 14.2.2003 passed by the Metropolitan Magistrate, New Delhi in Criminal Complaint case No. 478/1/2002 under Section 138 read with Section 142 of the Negotiable Instruments Act.

2. I have heard Mr. V.K.Shali learned counsel for the petitioners on admission and have gone through the impugned order as well as copies of the documents placed on the file.

3. As per complaint the brief facts are that the respondent-complainant company is a Government of India Enterprise. Accused No. 1 through its duly authorized Directors approached the complainant-company in April 2000 with a proposal for import of 1000 CBM Indonesian Meranti from one M/s PT. BUMITUMBUH PERKASA, INDONESIA and requested the complainant to import the goods on their behalf and promised to lift the goods as per agreement and to make complete payment thereof. The complainant was to give post dated cheque for 91.5% of the value as security along with company's undertaking for honouring the cheque. Accordingly, cheque No. 940188 drawn on Bank of Hyderabad, Noida dated 20.7.2000 for a sum of Rs. 53,15,250/- was given in favor of the complainant. The complainant opened a letter of credit on behalf of the accused and imported the goods from the supplier. The said contract was completed in October, 2000.

4. In November, 2000 the accused again approached the complainant for a second contract to import 700 CBM MLH LOGS from one M/s Seamark Exporters Sdn. Bhd. Sarawak, Malaysia and a fresh Association ship Agreement was entered into on 29.11.2000, on the same terms and conditions.

5. In para-6 of the complaint, it is averred that accordingly as per clause 1(i) of the agreement the accused were required to give post dated cheque to cover 91.5% of CNFFO value. Since the parties were dealing with each other for quite some time and the cheque bearing No. 940188 dated 20.7.2000 for a sum of Rs. 53,15,250/- given under the first Association ship Agreement was lying with the complainant unused, the accused requested that the same may be treated as security cheque under the second agreement. The accused at that stage expressly consented and informed the Complainant that the said cheque be

treated as revalidated and further stated that since the alteration made in the date already had their (accused persons) signatures, the complainant could fill in the date and present the same for encashment as and when the need arises.

6. In para-7 of the complainant, it is revealed that in the circumstances stated above the complainant was holding the aforementioned cheque with no date. Under the second Association ship Agreement the accused was to lift the Cargo imported against 100% payment to the complainant and the complaint had paid the entire amount to the supplier but the accused failed to lift the Cargo and violated the agreement despite repeated requests, which caused heavy loss to the complainant because the complainant had to pay dumping charges as well to the shipping agent.

7. In para-10 of the complaint, it is stated that on 31.12.2001 the accused wrote a letter to the complainant and acknowledged and admitted its liability towards the complainant and sought certain concession and time to make the payment but the complainant rejected the said request and called upon the accused to clear the outstanding amount.

8. In para-12 of the complaint, it is alleged that subsequently the accused requested and instructed the complainant to present the cheque bearing No. 940188 lying with them under the aforesaid Association ship Agreement dated 29.11.2000. The complainant accordingly, on the instruction of the accused and with the consent dated the cheque as 22.2.2002 and presented the same for encashment which was dishonoured.

9. In para 3 of the complaint, it is specifically averred that accused No. 1 is a company while accused No. 2 to 4 are the Directors of accused No. 1 company who were/are in charge of and were/are responsible for running of the affairs of the company and also conducting the business of the company.

10. In para 15 of the complaint, it is also averred that accused No. 1 along with accused No. 2 to 4 being Directors of accused No. 1 Company and in charge of the day to day affairs of the Company have in the circumstances committed the offences under the Negotiable Instruments Act and were liable in that behalf.

11. Learned counsel for the petitioner has argued that the first contract was completed and the cheque related to the first contract and it was only security and there were no proper averments and that the petitioner No. 2 ceased to be a Director of the company from 21.1.2002.

12. Perusal of the complaint, material portions of which are reproduced above, prima facie shows that the complainant did not conceal anything from the court.

13. The facts and circumstances show that the parties had a successful earlier contract. There is no denying the fact that in the first contract a post dated cheque was given as security. Since the terms and conditions of the second contract are the same, then it is obvious that for the second contract also a post dated cheque had to be given as security. Since the first contract was concluded and the parties were having good relations and there is hardly any gap between the two contracts, it is plausible and believable on the face of it that the accused could tell the complainant to treat the earlier unused cheque as security for the second contract. The Director as also the authorized signatory had put their signatures under the cutting regarding the date of issue of cheque and the plea of the complainant that the date was filled with consent cannot be thrown out at the threshold. therefore, at this stage the accused cannot be heard to say that the first cheque could not be used for the second transaction.

14. As regards the second point even if a post dated cheque is given as security and the payment is not made as promised, then the said post dated cheque itself becomes payable because that is the agreement and understanding between the parties otherwise the security would have no meaning. Learned counsel for the petitioner has cited a judgment titled *Nijjer Agro Foods Limited and Ors. v. Shri Nasib Chand and Anr.* reported in : 2003VIIAD(Delhi)327 , in support of his contentions. The facts in that case were that post dated cheques were given as security subject to the terms and conditions that the said cheques were to be replaced by demand drafts for the equivalent amount. The accused in that case had made the payment by way of demand drafts but the the complainant instead of returning the cheques presented them. The court opined 'once the payment against those cheques was made by way of Demand Drafts the liability qua these

cheques ceased to exist and therefore the complainant was not entitled to present those cheques even if some amount or balance was outstanding'.

15. The main distinguishing factor of the case before this court is that the earlier cheque was made part and parcel of the second transaction by mutual agreement but no payment whatsoever was made in the second new transaction. therefore this judgment does not help the petitioner but may rather go to some extent in favor of the complainant.

16. As regards the averments, I have already referred to para 3 & 15 of the petition. The contention of the learned counsel for the petitioner that there was no averment that at the time of issue of the cheque the petitioners were in charge and responsible for running the affairs of the company. The words used in the averments are 'were/are' and there is a substantial compliance of pleadings. The resignation of the petitioner on 21.1.2002 cannot be given importance because it is a internal matter of accused company and the complainant is not expected to know as to who is resigning and who is joining the company but as on 29.11.2000 when the parties entered into the second contract the petitioner No. 2 was very much the Director of the company.

17. I may mention here that about 6 years have passed since the agreement was entered into and the complaint was filed on 13.5.2002. From this date 4 years have gone by and the matter under the Negotiable Instruments Act is still pending despite the provisions under Section 143 of the Negotiable Instruments Act, according to which the matter has to be decided as expeditiously as possible preferably within 6 months.

18. I have dealt with the similar matters regarding the dishonour of cheques. I may refer to CrI. M.C. No. 2764/2005 titled Daljeet Singh Chandok v. State and Anr. decided on 9.1.2006, where I have discussed the latest amendments in the Negotiable Instruments Act, enhancement of punishment and time limitation for disposal of the matters. In my view, in this case whatever defenses are being raised in this court should be raised before the trial court and this court under Section 482 of the Code of Criminal Procedure cannot examine the documentary and oral evidence which may have to be led before the trial court and which has to

be tested by cross examination. It is established law that this court under Section 482 of the Code of Criminal Procedure can intervene only in extraordinary circumstances where there is manifest injustice on the face of the record.

19. Considering all the facts and circumstances, I do not find any justification for interference under Section 482 of the Code of Criminal Procedure. The petition is, therefore, dismissed.

20. Trial court is, however, directed to dispose of the matter as expeditiously as possible, preferably within 4 months.

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

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