

Rajeev Bhalla Vs. State and anr.

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Court : Delhi

Decided On : Mar-01-2013

Judge : Kailash Gambhir

Appellant : Rajeev Bhalla

Respondent : State and anr.

Advocate for Def. : Mr. Chander M. Maini

Advocate for Pet/Ap. : Ms. Iti Sharma

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 2870/2012 Rajeev Bhalla Appellant Through:Ms. Iti Sharma versus Respondent State & Anr. Through: Mr. Chander M. Maini CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR ORDER % 1.03.2013 CRL.M.C. NO. 2870/2012 1. By this Petition filed under Section 482 Cr.P.C , the petitioner seeks quashing of Complaint bearing CC No. 400/K/ 2012 respondent no. 2 under section 138 of Negotiable titled as filed by the Instrument Act, 1881 Smt. Neeraj Chopra V. Sh. Rajeev Bhalla and also the summoning order dated 01.05.2012, issued by the court of Sh. Chander Mohan, Metropolitan Magistrate (Central), Tees Hazari Courts, Delhi.

2. Addressing arguments on the present petition, counsel for the petitioner submits that respondent who is a complainant before the learned Magistrate is the sister of the petitioner and the petitioner in good faith had handed over three blank signed

cheques to the respondent herein for the purpose of payment of some insurance premium. Counsel further submits that by a registered will dated 21.2.2005, the mother of the petitioner had bequeathed all her moveable and immovable assets in favour of the petitioner and therefore, there was no occasion for the petitioner to have issued a cheque for a sum of Rs.30 lacs in favour of the respondent towards her alleged share in the property. Counsel also submits that petitioner had throughout been in possession of the residential house bearing flat no. L-138B, DDA Flats, Kalkaji, New Delhibut with a view to black mail the petitioner and extract money from him, the respondent has filed a complaint Case under Section 138 of the Negotiable Instruments Act, 1881 after misusing the unused signed cheques of the petitioner. Counsel also submits that the complaint case filed by the respondent is manifestly attended with malafide designs and therefore, such an oblique and malice complaint is squarely covered by the judgment of the Apex Court in the case of State of Haryana Vs. Bhajan Lal, AIR 1992 SC604and the same merits dismissal. Counsel also submits that complaint filed by the respondent is otherwise not maintainable in the eyes of law as the same does not fulfil the other essential ingredients of Section 138 of the Negotiable Instruments Act, 1881. Counsel for the petitioner has also placed reliance on the judgment of the Apex Court inPepsi Foods Ltd. and anr. Vs. Special Judicial Magistrate and Ors. reported in AIR 1998 SC128 to support his arguments that the summoning of an accused in a criminal complaint is a serious matter and therefore, the machinery of criminal law should not be set in motion in cases of frolicsome nature.

3. I have heard learned counsel for the parties and have also perused the order passed by the learned Magistrate.

4. The issue raised by the petitioner in the present petition cannot be appreciated at this stage as the same can be gone to only at the time of trial. The respondent in her complaint has alleged that after she had sent a legal notice with a request to the petitioner to settle the dispute with regard to the said flat, thereafter, the parties had arrived at an oral settlement between them, which led the petitioner to issue a cheque for a sum of Rs.30 lacs towards the alleged share of the defendant in the said flat. It is also the case of the complainant that she had also executed a

relinquishment deed, NOC and affidavit in favour of the petitioner with a view to relinquish her right in the said flat. It is also the case of the complainant that the said cheque was returned unpaid by the bank of the petitioner with the remarks account closed. It is also the case of the complainant that she had issued a legal notice dated 15.3.2011 thereby calling upon the petitioner to make payment of the said amount of the dishonoured cheque but in vain.

5. The said averments made by the complainant in her complaint prima facie satisfy the ingredients of Section 138 of the Negotiable Instruments Act, 1881. But the truth and veracity of the said averments cannot be adjudged at this stage, as the Petitioner has nowhere in his petition given any details pertaining to the purpose of giving the aforesaid cheques or the details of the alleged insurance policies or dates, thereby satisfying the court that these cheques were given towards an advance premium for the insurance policy. Therefore, to say that the petitioner had issued unsigned cheques for payment of certain insurance premium or there was no oral settlement between the parties to settle the dispute of flat are the issues, which can be best appreciated at the time of trial and not in exercise of inherent jurisdiction of this court under Section 482 Cr.P.C. The petitioner may have a good defence to ultimately succeed in the said complaint case but at this stage, the court has to prima facie consider the averments made in the complaint. Nothing specific explicating the allegations has been put forth by the petitioner for the purpose of handing over the said cheques to his sister.

6. It is well settled that for the purpose of quashing of a complaint or FIR, the High Court cannot look into the defence of the accused. The Court is only required to see whether on the basis of the averments made in the complaint and the relevant particulars produced by the Complainant, there are grounds for proceeding against the accused. Inherent power of quashing criminal proceedings should be exercised very sparingly and with great circumspection. It does not confer on the court to act arbitrarily as per its own whims and caprice. At this stage, the Courts could not have gone into the merits and reached a conclusion that there are no existing debt or liability and quash the complaint. Therefore, the basic law is that the complaint under Section 138, Negotiable Instruments Act cannot be quashed by High Court by taking recourse to Section 482 Cr.P.C, if disputed questions of

facts are involved which need to be adjudicated after respective evidence is led by the parties before the trial court.

6. In the case of Signaps and Anr.Vs. Bumpy Udyog,149(2008)DLT185, wherein the petitioner had filed a petition under Section 482 Cr.P.C for quashing of a complaint under Section 138 of Negotiable Instruments Act, 1881,alleging that the complainant wilfully suppressed certain material facts in the complaint and hence the petition deserves to be dismissed. This Court held that the disputed facts forming the core issue of controversy, that if the cheque was dishonoured or if it was delayed in presentation or for any purpose there of etc. are facts which cannot be resolved under Section 482 Cr.P.C. The Honble Court specifically held as under:

9. It would also be a matter of evidence whether the cheque which was presented for payment was a blank cheque which subsequently filled up by the complainant or was in fact issued by the accused after the expiry of the agreement. These are disputed facts which cannot be resolved in proceedings under Section 482 Cr PC but will have to await trial. The submission of the counsel for the petitioner that these are self-evident facts cannot be accepted. In Shanku Concretes the agreement in question was subsisting at the time of the presentation of the cheque in question. As far as the decision of the Andhra Pradesh High Court in Taher N. Khambat is concerned, it was in a criminal appeal against an acquittal and the High Court had at that stage the benefit of the evidence whether blank cheques had been subsequently filled up and presented for payment. Neither decision is Therefore of assistance to the petitioner here.

10. No ground is made out for interference by this court to quash the criminal proceedings in exercise of its powers under Section 482 Cr.P.C. It is however clarified that no observation made by this Court is intended to influence the findings that may be arrived at by the trial court upon an independent assessment of the evidence that comes on record before it.

11. There is no merit in this petition and it is dismissed as such with no order as to costs. The pending applications also stand dismissed.

7. Under these circumstances, it cannot be said that the learned trial Court has committed any error and / or illegality in issuing summons for offence under Section 138 of the Negotiable Instruments Act, 1881, or the same deserves to be quashed and set aside by this Court in exercise of powers under Section 482 of the Code of Criminal Procedure.

8. For the reasons stated above, the present petition being devoid of any merits deserves dismissal and therefore, the same is accordingly dismissed. It is ordered accordingly. KAILASH GAMBHIR, J March 1, 2013 g

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