(1998) 09 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition No. 23180-M of 1997

Agarval Auto Traders APPELLANT

Vs

M/s Globe Tractors (Agencies) RESPONDENT

Date of Decision : 09-09-1998

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1999) 1 CivCC 22 : (1998) 4 RCR(Criminal) 790

Hon'ble Judges : K.K. Srivastava, J

Bench : Single Bench

Advocate : Deepak Dhingra, for the Appellant; Ajay Tewari, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Srivastava, J.—This is a petition filed u/s 482 of the Code of Criminal Procedure by Aganval Auto Traders and its parents Mahendra Kumar Agarvval, Darpan Aganval and Smt.Uma Aganval wife of Mahendra Kumar Aganval praying for setting aside order dated 7.7.1997 passed by Judicial Magistrate 1st Class. Kamal. (Copy Annexure P14). and the impugned order of summoning dated 11.1.1996. copy Annexure P15. passed in criminal complaint case No.222 of 1996 by M/s Globe Tractors (Agencies) G.T.Road Kamal through Kashmiri Lal.

2. The respondent-M/s Globe Tractors filed the said criminal complaint case u/s 138 of the Negotiable Instrument Act. 1881 (for short to be referred as the Act 1881); copy Annexure P8. on 27.11.1995 against M/s Agarwal Auto Traders. Ramnagar Road. Kashipur District Nainital (U.P.) through Shri Mahendra Aganval. Director of Agarwal auto traders. Darpan Agarwal. Director of Agarwal Auto Traders and Mrs.Usha Agarwal.

3. The brief averments made in the complaint were as under:-

The accused-Company Agarwal Auto Traders agreed to sell 6 tractors of Ford Tractors make to the respondent-complainant Company M/s Globe Tractors Agency. G.T.Road. Kamal. The respondent-Company paid a sum of Rs

13.50,000/- as an advance on 28.9.1995 to the accused Agarwal Auto Traders for which a receipt was duly issued by the Director Mahendra Agarwal when he visited Karnal on 28.9.95. Later on. on 1.10.1995 Mahendra Agarwal informed the respondent-Company M/s Globe Traders that the accused Company was unable to supply Ford Tractors. The advance amount of Rs 13.5O.00O/- was returned by issuing a cheque for the said amount which was issued in favour of the respondent-Company M/s Globe Traders. The said cheque bore No.631110 dated 1.10.1995 and was issued for a sum of Rs 13.50.000/-which was drawn and signed by Mahendra Agarwal for an on behalf of Agarwal Auto Traders payable at Bank of Baroda. Rathoda. The cheque was issued in favour of the complainant-firm M/ s Globe Traders. The complainant-Company, the holder of the cheque in due course, presented the cheque to its Bankers Oriental Bank of Commerce. Karnal where the complainant-Company was running a cash-credit account. The Bankers of the complainant-Company did not have any Branch of their own at Rathoda (U.P.). The disputed cheque was presented at the counter of the Bank of Baroda, Rathoda, along with a collecting Bank memo of the Oriental Bank of Commerce, Karnal on 10.10.1995 through a Special messenger. The said cheque was, however, returned as unpaid by the accused-Company''s Banker, Bank of Baroda, Rathoda on 10.10.1995 with the remarks "Referred to Drawer (insufficient funds) as contained in their latter No.BR/15C/A dated 10.10.1995. The complainant-firm received the intimation regarding the dishonouring of the cheque in question on 11.10.1995 vide memo of even date of Oriental Bank of Commerce, Karnal. It was alleged that the accused were fully aware of the fact that the said cheque on presentation would never be honoured because of insufficiency of funds in their account. The complainant-firm sent a registered notice besides notice issued under Certificates of Postings to the accused as required u/s 138 of the Act 1881 calling upon the accused-firm and its Directors/Parents to make payment of the amount of the dishonoured cheque to the complainant -respondent Company within 15 days of the receipt of the notice, along with interest @ 18% per annum. The accused-petitioners, however, did not make the payment of the amount of the cheque aforesaid within the notice period, hence the respondent-complainant filed the impugned complainant in the Court of Illaqa Magistrate at Karnal against the petitioners. The Illaqa Magistrate (Chief Judicial Magistrate. Karnal) passed order dated 31.1.1996 summoning the petitioners as accused u/s 138 of the Act 1881 for 16.4.1996. vide copy of the order, Annexure PI 5. The petitioners challenged the order of summoning before this Court in Criminal Misc. 10939-M of 1997 which came up for hearing before Hon''ble R.L.Anand. J. on 13.5.1997 and was disposed of by the following order, copy Annexure P11. filed with the petition :

"After hearing the learned counsel for the parties, this petition stands disposed of with the observations and directions that the learned Magistrate would pass appropriate orders according to merits on the application already moved by the petitioners within one month from the receipt of the copy of this order. The petitioners shall be permitted to take all the pleas, which have been taken in the present petition, before the learned Magistrate, in order to convince him that the complaint filed u/s 138 of the Negotiable Instruments Act (Annexure P9) was nothing but an abuse of the process of law, and that the summoning order dated 31st January. 1996 (Annexure P10) is required to be recalled. Directions arc also given to the learned Magistrate to exempt the personal appearance of Darpan Aggarwal and Mrs.Uma Aggarwal."

4. The petitioners in pursuance of the order of this Court quoted above filed an application in the shape of written arguments, Copy Annexure PI 3. dated 1.7.1997 in the Court of Ms.Shalini Singh, Judicial Magistrate 1st Class. Karnal praying for recalling of summoning order dated 31.1.1996 and to dismiss the complaint and discharge the accused in the complaint case. The matter came up for hearing before Judicial Magistrate 1st Class, Karnal, who vide order, copy Annexure PI4. held that the impugned order of summoning was not liable to be recalled and the impugned complaint was not liable to be dismissed, consequently, the application of the petitioners was dismissed. Feeling aggrieved against the order dated 7.7.1997 passed by Judicial Magistrate 1st Class. Karnal. the accused petitioners have filed this petition seeking not only the quashing of the impugned order dated 7.7.1997 of Judicial Magistrate 1st Class, Karnal but also the order of summoning dated 31.1.1996 passed by Chief Judicial Magistrate. Karnal, copy Annexure PI5. and proceedings subsequent thereto pending before Judicial Magistrate 1st Class. Karnal.

5. Notice was issued to the respondent who put in appearance and filed reply contending, inicralia, that the petitioners have not given complete facts in this petition, h. was not disclosed that apart from six tractors which were to be supplied by the accused to the complainant, they had also purchase agricultural implements from Karnal vide Bill No. 14446 dated 26.9.1995 issued by M/s National Tractors and Implements through the respondent. It was contended further that two per cent commission was added and the respondent sent Bill No. 0975 for a sum of Rs 3,25,000/- to the petitioners. It was contended that the relations between the petitioners and the respondents were quite cordial upto the end of September, 1995. The respondent believed the petitioners to be a very sound party who would never renege on its payment. The petitioner firm had issued one cheque for a sum of Rs 13,50,000/- in favour of the respondent which represented the refund of the amount of advance and the draft for Rs 3,25,000/- towards the cost of agricultural implements purchased by the petitioners. It was urged that these two Mere completely different and pertained to separate transactions and this was the reason why the respondent did not mention about it in the complaint. The petitioners were now trying to escape their liability under the cover of payment of a sum of Rs 3.25.000/- which was due from them under a completely separate head. The petitioners are also guilty of not disclosing these facts in their earlier petition and they contended the same and succeeded in getting a stay order of the proceedings in the complainant case pending before the trial Court. The respondent further averred that the learned Magistrate has rightly held in para 7 of the impugned order that:

"It is a question of fact as to whether the outstanding amount was paid, if so, its effect upon the maintainability in law of the impugned complaint. At this stage of the case, it cannot be held that merely because the complainant omitted to disclose the receipt of this amount, the complaint is bad and not sustainable. The complainant has alleged that receipt of this amount was a separate transaction and extraneous to the controversy in hand. This question will have to be considered at the time of trial xxx."

6. On merits it was denied that the respondent requested that they would accept the payment by demand draft and contended that had this been so, the petitioners would have sent the demand draft for the entire amount of Rs 13,50,000/- and not only for Rs 3,25,000/- which was with reference to a completely serrate transaction. The petitioners have for reasons best known of them themselves stopped the payment of their cheque of Rs 13.50.000/-.

7. The petitioners filed a re-joinder to the reply of the respondent. In preliminary objections taken in the re-joinder it was, inter alia, alleged that Kashmiri Lal who has signed and verified the reply of the respondent, was working as a Peon with the respondent-firm and he is not an authorised signatory on behalf of the respondent-firm. No authority letter has been filed by Kashmiri Lal to show that he was duly authorised to depose and file the reply and the affidavit. The allegations made in the preliminary objections of the reply were categorically denied. It was contended that it was not only obligator,'' but mandatory on the part of the respondent to disclose the alleged transaction, if there was one, and that too. for an alleged amount to correspond for the payment alleged not to have been made by the petitioners to the respondent, the subject matter of the complaint. The petitioners categorically denied the alleged transaction which is referred to as the subject matter of any alleged Bill No. 14446 dated 26.9.95. The petitioners'' were not a party of any said documents as regard the alleged transaction. The respondent is guilty of having faked Government Stamps besides being guilty of forgery. On merits, it was contended that no agricultural implements were ever sold to the petitioners by the respondent and the alleged story of the sale of equipments is an afterthought and has been concocted at the time of filing reply to the application filed by the petitioners for dropping the proceedings for dropping the proceedings and ordering for the discharge of the petitioners. The other averments made in the reply were denied and the allegations made in the petition were reiterated.

8. I have heard learned counsel for the petitioners and learned counsel for the respondent and have perused the impugned orders and the record of the case.

9. The petitioner seek the quashing of the impugned order of summoning. The impugned order rejecting the plea of the petitioners for dropping the proceedings and ordering of discharge of the accused by recall of summoning order is primarily on the factual averments made in respect of the merit of the case. A perusal of the reply filed by the respondents will go to show that there were two transactions entered into between the parties. One transaction related to the

purchase of the Tractors for which a sum of Rs 13.50,000/- as advance was paid to the petitioners and the order is alleged to be a transaction of sale of agricultural implements for which a sum of Rs 3,25.000/- was involved. The petitioner have in their re-joinder seriously disputed the later transaction of the sale of agricultural implements and have alleged that the respondent has committed forgery and prepared fake papers by setting up a case which was not originally set up in the complaint filed before the Illaqa Magistrate. It may be mentioned that the facts narrated above are all disputed by the parties and the matter is pending before the Illaqa Magistrate which is the Court of competent jurisdiction to settle the factual controversy. It is a question to be settled by the Illaqa Magistrate as to whether there was only one transaction entered into between the parties relating to the sale of the "Tractors or whether there was yet another transaction apart from the sale transaction of the Tractors i.e. for the sale of the agricultural implements. It is to be settled by the learned trial Magistrate as to whether the payment of sum of Rs 3,25.000/- related to the transaction of the sale of the Tractors which advance amount of Rs 13,50,000/- was undisputedly made by the respondent-complainant to the petitioners who were unable to supply the tractors and who issued the disputed cheque of Rs 13.50,000/- for refund of the amount of the advanced money or the said amount of Rs 3.25.000/- related to the other transaction of the sale of agricultural implements. It will not be appropriate for this Court to settle these factual controversies in this petition filed u/s 482 of the Code of Criminal Procedure seeking the quashing of the impugned orders passed in the complaint case. Appeal from it, the learned Illaqa Magistrate will be the Court of competent jurisdiction to consider and decide whether Kashmiri Lal was duly authorised to file a reply and act on behalf of the respondent-firm. It cannot be assumed for the purpose of quashing that Kashmiri Lal had no authority. The learned Judicial Magistrate 1st Class has dealt with the contention regarding Kashmiri Lal in para 11 of the impugned order which reads as under:

"Regarding the last submission made by Sh.S.S.Warach. it deserves mention that subsequently power of attorney duly executed by ail three partners of the firm was filed in the Court. By virtue of that document dated 6.11.1995 Sh.Kashnuri Lal was duly authorised by the executants to file present complaint. No doubt this document was not brought on record earlier but this by itself cannot be sole ground for dismissal of the complaint. At best it can be termed as irregularity and not an illegality. A complaint filed by a person, who holds power of attorney is very much permissible. In this regard reliance is placed on S.K.AbdurRahim vs. Amal Kumar Banerjee, 1994 (2) RCR 412 and Manimekalai vs. Chapaldas Kalyanji Sanglwi. 1995 (2) RCR 182. The copy of power of attorney placed on the file inter alia authorizes the said Kashmiri Lal the holder of the power of attorney, to appear in any civil, criminal or revenue case pending in courts in Karnal or to be instituted in Kamal. There is nothing in Section 142 of the Negotiable Instrument Act, which can be taken to have curtailed or abrogated the right of a person in whose favour, cause of action has arisen to authorise his agent to make complaint on his behalf under the said section. Thus, I hold that there is nothing wrong in making of the complaint by authorised agent of the payee on the basis of the power of attorney executed by them, Case law relied upon by the learned counsel of the applicants is of no assistance to him as these cases are clearly distinguishable on facts."

10. Learned counsel for the petitioners referred lo the reply contained in para 6 filed by the complainant-respondents to the application of the petitioners to drop the complaint, copy Annexure P12, wherein it was mentioned as under:

"That para No.6 of the application as stated is wrong and hence denied. Since the accused have paid only Rs 10,25.000/- against payment of Rs 13,50,000/-, and the amount of Rs 3,25,000/- is towards purchase of agricultural implements. In these circumstances the reply of notice allegedly given by the accused has no meaning."

11. As said earlier, the complainant-respondent has categorically taken a stand that the payment of sum of Rs 3,25,000/- was towards purchase of the agricultural implements which fact is seriously disputed by the petitioners and the same requires to be determined by the learned trial Magistrate. It is also to be considered whether the payment of a sum of Rs 10,25,000/- by the accused has any affect on the maintainability of the complaint in regard to the offence punishable u/s 138 of the Act 1881.

12. Learned Counsel for the respondent contended that the factual aspects of the case arc to be considered by the learned trial Magistrate and this Court should not go into the disputed questions at this stage to record a speculative findings of facts. He further contended that in case the petitioners succeeded in proving that the payment of a sum of Rs 3,25,000/- was towards the amount of the disputed cheque which related to the funds of the advance money of Rs 13.50.000/- the same will be duly taken note of by the learned Magistrate.

13. After carefully going through the rival contentions. I am of the considered opinion that it will not be appropriate for this Court at this stage to consider the respective cases of the parties relating to the factual controversy which has to be properly adjudicated upon and settled by the learned Magistrate dealing with the case. The impugned order, copy Annexure P14. vide which the learned Magistrate has rejected the application of the petitioners for dropping the complaint and discharging the petitioners does not suffer from any legal infirmity. The learned Magistrate has rightly held in para 7 of the order that:

"...Whether or not the amount of Rs 3.25,000/- was paid by the accused to the complainant towards purchase of agricultural implements is a question of fact, which has to be established by evidence. The receipt of Rs 10.25.000/- is admitted. It is a question of fact as to whether the outstanding amount was paid, if so, its effect upon the maintainability in law of the impugned complaint. At this stage of the case, it cannot be held that merely because the complainant omitted to disclose receipt of this amount, the complaint is bad and not sustainable. The complainant has alleged that receipt of this amount was a separate transaction and extraneous to the controversy in hand. This question will have to be considered at the time of trial and it will be hazardous to accept this argument of learned counsel for the complainant at this pre-trial stage."

14. In view of the foregoing discussion. 1 find no merit in this petition. This petition is accordingly dismissed.

