

(2003) 05 OHC CK 0005
In the Orissa High Court
Case No : Criminal M.C. No. 1818 of 2002

Anand Kumar Suraj Ratan Mohatta

APPELLANT

Vs

S.L. Agrawala and Co. and Another

RESPONDENT

Date of Decision : 16-05-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2003) CriLJ 4159 : (2003) 25 OCR 711

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : B.R. Das, D.N. Mohanty and S.K. Mishra, for the Appellant; S.K. Mund, D.P. Das and S.K. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Das, J.—This is an application u/s 482, Criminal Procedure Code for quashing the proceeding in I.C.C. No. 151 of 2001 pending in the Court of the S.D.J.M., Panposh, wherein cognizance of the offence punishable u/s 138 read with Section 141 of the Negotiable Instruments Act, has been taken and process has been issued against the petitioner.

2. The case of the petitioner, is that he was the Managing Director of M/s. Mohatta and Heckel Ltd., a company registered under the Companies Act, 1956, having its registered office at Mustafa Building, Sir P. M. Road, Mumbai and engaged in the business of manufacturing/production of steel wire products at its works at Khopoli, Dist. Raigad (Maharashtra). It is further stated that opposite party No. 1 is a partnership firm and a sister concern of M/s. Utkal Steels Ltd. having its head office at Uditnagar, Rourkela Dist. Sundargarh and its Branch Office at 301, Janki Kutir, Juhu, Mumbai. Opposite party No. 2 is one of the partners of opposite party No. 1 -firm.

The petitioner's company entered into a business transaction with M/s. Utkal Steels Ltd., whereby the said company supplied raw materials to petitioner's

company in the form of iron and steel rods and the petitioner company sold the finished steel wire products manufactured in its factory at Khopli, which continued up to end of 1999. During that period various memoranda of understanding and agreements have been executed between the parties regarding their business transactions and during such transaction in the year 1998, the Directors of M/s. Utkal Steels Ltd. suggested to the petitioner to open an account in U.Co. Bank, Rourkela, in which the said company was also having its accounts. This arrangement was done in order to facilitate petitioner's company to collect its dues from its customer and deposit the same in the said account and upon such deposit the opposite party-Company would transfer equivalent amount to their account through cheques issued by the petitioner's company towards payment for supplying the raw materials, it is further argued that when the business relationship of petitioner's Company and M/s. Utkal Steels Ltd. was cordial, the petitioner's company issued blank cheques in good faith to be used for the purpose of transferring amounts equivalent to the amounts deposited through collections from its customers. This was done with an intention that whenever Utkal Steels Ltd. made collections from the customers of petitioner's Company it would know the exact amount collected and would deposit the same in the said Bank in the name of petitioner's Company and thereafter withdraw the equivalent amount by filling up the blank cheque. It is further stated that while things stood thus, the partners of opposite party firm who are also Directors of M/s. Utkal Steels Ltd. entered into a conspiracy and presented two blank cheques issued by the petitioner's Company bearing Nos. 156349 and 156350 by filling up the amount of Rs. 1 crore dated 1-10-2001 in each of the cheques showing to be drawn in favour of M/s. Utkal Steels Ltd. and the opposite party firm respectively. The petitioner and other Directors of the Company came to know about the presentation of such cheques by the opposite party No. 1-firm when they received notices dated 17-10-2001 individually. In spite of reply of the petitioner clarifying the position, a complaint was lodged in which cognizance was taken u/s 138 read with Section 141 of the Negotiable Instruments Act.

3. The plea of the petitioner is that filling up the amount of one crore in the blank cheque is an act of forgery of valuable instrument, inasmuch as, the opposite party No. 1-company was not authorised to fill up any amount arbitrarily but to present cheque as per the arrangement and understanding. That apart, as the petitioner's company is registered with BIFR, it is not even within its authority to issue cheque of Rs. 1 crore for any alleged outstanding.

4. The sum and substance of the case of the petitioner is that the institution of the case is mala fide with sole intention of the opposite party No. 1 to harass the petitioner and other Directors and coerce them to pay the opposite party No. 1-company which they are not entitled to get. According to the petitioner, the order of cognizance is liable to be quashed for the reasons mentioned above.

5. Law is well settled that the High Court can in exercise of its inherent

jurisdiction quash a criminal proceeding only when the allegations made in the complaint do not constitute an offence or that the exercise of inherent power is necessary either to prevent the abuse of the process of the Court or otherwise to secure ends of justice (See Smt. Chand Dhawan Vs. Jawahar Lal and others, .

6. Here is a case where the contention of the petitioner is that there is no liability to the tune of the amount for which the cheque in question was drawn and there is no question of the petitioner issuing a cheque in favour of the complainant.

7. In the case of M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, , the Apex Court held as follows :

"..... It is settled law that at this stage the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the complaint. The inherent powers do not confer any arbitrary jurisdiction on the Court to act according to its whim or caprice. At this stage the Court could not have gone into merits and/or come to a conclusion that there was no existing debt or liability."

8. In view of the law laid down by the Apex Court in the aforesaid decision and in view of the fact that the submissions advanced and ground taken by the accused can be very well examined in course of the trial, I am not inclined to interfere with the order of cognizance taken against the accused-petitioner and the same can very well be examined in course of the trial. Accordingly, the Criminal Misc. Case fails and is dismissed.

9. However, learned counsel for the petitioner in course of hearing submitted that the Managing Director, of petitioner's company is an outsider and he may be released on bail on his surrender. Considering the prayer of the learned counsel for the petitioner, I direct that if the accused surrenders before the Sub-Divisional Judl. Magistrate, Panposh for the Magistrate in his charge within a period of four weeks hence, he shall be released on bail for an amount of Rs. 50000/- with two sureties each for the like amount to the satisfaction of the learned Magistrate in I.C.C. No. 151 of 2001. Petition dismissed.