

(2012) 01 GUJ CK 0041

In the Gujarat High Court

Case No : Special Criminal Application No. 1422 of 2011

Anilbhai C. Naynani

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 20-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2012) 1 BC 633

Hon'ble Judges : J.C. Upadhyaya, J

Bench : Single Bench

Advocate : Tarak Damani, for the Appellant; K.P. Raval, Assistant Public Prosecutor for the Respondent No. 1 and Mr. R.D. Dave, Advocate for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Upadhyaya, J.—Heard. Mr. Tarak Damni, learned Advocate for the petitioner, Mr. R.D. Dave, learned Advocate for respondent No.

2-original complainant and Mr. K.P. Raval, learned Additional Public Prosecutor for the respondent No. 1-State.

2. At the time of hearing of this matter, my attention was drawn to a common order dated 29.9.2011, passed by this Court (Coram : M.R. Shah,

J.) in Special Criminal Application No. 463 of 2011 with other allied matters and it is submitted that the said petition was filed by co-accused No.

3 Sangitbhai Naynani for quashment of the very complaint filed by the respondent No. 2 herein, alleging the offence punishable under Sections 138

and 141 of the Negotiable Instruments Act. The order dated 29.1.2011, passed by this Court (Coram: M.R. Shah, J.) in Special Criminal

Application No. 463 of 2011 with other allied matters shall be retained on record.

3. Considering the above mentioned order and more particularly Para-11 therein, it is clear that the quashing petition of the Co-accused No. 3-

Sangitbhai Naynani came to be dismissed. Prima facie, there is also no dispute that the two accused persons i.e. accused Nos. 2 and 3 involved in

the aforementioned complaint lodged by respondent No. 2-original complainant were joint signatories to the disputed cheque and they were

Directors of the accused No. 1-Company.

4. Under the facts and circumstances of the case, it is clear that both the accused viz. petitioner herein as well as co-accused v/z. Sangitbhai

Naynani, petitioner in Special Criminal Application No. 463/11 and other allied application can be said to have been almost similarly situated.

Order dated 29.9.2011, passed in Special Criminal Application No. 463 of 2011 by this Court runs as under:

1. As common question of facts and law arise in this group of petitions and are between the same parties, they are heard, decided and disposed of

by this common Judgment and Order.

2. Special Criminal Application No. 463 of 2011 has been preferred by the petitioner - original accused No. 3 to quash and set aside the

impugned complaint being Criminal Case No. 1974 of 2009 (Old Criminal Case No. 1927 of 2002) pending in the Court of learned Metropolitan

Magistrate, Court No. 5, Ahmedabad for the offences punishable u/s 138 read with Section 141 of the Negotiable Instruments Act.

3. Special Criminal Application No. 464 of 2011 has been preferred by the petitioner original accused No. 3 to quash and set aside the impugned

complaint being Criminal Case No. 1975 of 2009 (Old Criminal Case No. 270 of 2002) pending in the Court of learned Metropolitan Magistrate,

Court No. 5, Ahmedabad for the offences punishable u/s 138 read with Section 141 of the Negotiable Instruments Act.

4. Special Criminal Application No. 465 of 2011 has been preferred by the petitioner-original accused No. 3 to quash and set aside the impugned

complaint being Criminal Case No. 1978 of 2009 (Old Criminal Case No. 1450 of 2002) pending in the Court of learned Metropolitan

Magistrate, Court No. 5, Ahmedabad for the offences punishable u/s 138 read with Section 141 of the Negotiable Instruments Act.

5. Special Criminal Application No. 466 of 2011 has been preferred by the petitioner - original accused No. 3 to quash and set aside the

impugned complaint being Criminal Case No. 1973 of 2009 (Old Criminal Case No. 1916 of 2002) pending in the Court of learned Metropolitan

Magistrate, Court No. 5, Ahmedabad for the offences punishable u/s 138 read with Section 141 of the Negotiable Instruments Act.

6. Special Criminal Application No. 532 of 2011 has been preferred by the petitioner - original accused No. 3 to quash and set aside the

impugned complaint being Criminal Case No. 1390 of 2009 (Old Criminal Case No. 75 of 2002) pending in the Court of learned Metropolitan

Magistrate, Court No. 5, Ahmedabad for the offences punishable u/s 138 read with Section 141 of the Negotiable Instruments Act.

7. The respondent No. 2 - original complainant - Gujarat State Financial Corporation has filed the aforesaid complaints/Criminal Cases against the

petitioner and others for the offences punishable u/s 138 read with Section 141 of the Negotiable Instruments Act. For dishonour of the cheques

issued by the original accused No. 1 M/s. Shivamba Textile Pvt. Ltd., signed by the petitioner herein as Director and authorized signatory of the

said accused No. 1 Company. That the learned Magistrate has issued process/summons against the petitioner and others for the offences

punishable u/s 138 r/w Section 141 of the Negotiable Instruments Act. That thereafter the petitioner submitted applications before the learned

Magistrate to recall the order issuing process against him submitting that before the cheques in question were presented before the Court, the

petitioner had already resigned as a Director and, therefore, the petitioner has not committed the offences punishable u/s 138 r/w Section 141 of

the Negotiable Instruments Act, as alleged. The learned Magistrate rejected the said applications by holding that once process has been issued, he

has no jurisdiction to recall the order issuing process and hence the petitioner - original accused No. 3 who is signatory to the cheques in question,

has preferred all these petitions under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure to quash

and set aside the impugned complaints/ Criminal Cases.

8.01. Mr. Damani, learned Advocate appearing on behalf of the petitioner - original accused No. 3 has vehemently submitted that as such the

petitioner has not committed the offences punishable u/s 138 r/w Section 141 of the Negotiable Instruments Act, as alleged. He has submitted that

the petitioner had resigned as a Director of the accused No. 1 Company prior to the cheques in question were deposited and, therefore, it cannot

be said that the petitioner has committed the offences punishable u/s 138 r/w Section 141 of the Negotiable Instruments Act, as alleged.

8.02. Mr. Damani, learned Advocate appearing on behalf of the petitioner - original accused No. 3 has relied upon the decision of the Hon'ble

Supreme Court in the case of DCM Financial Services Ltd. Vs. J.N. Sareen and Another, , more particularly para 19 in support of his above

submission and prayer to quash and set aside the impugned complaints/criminal cases.

8.03. Mr. Damani, learned Advocate appearing on behalf of the petitioner - original accused No. 3 has also submitted that even there are no

specific averments and allegations against the petitioner - accused No. 3 that at the relevant time when the cheques in question were issued, the

petitioner was in charge and in day-to-day management of the accused No. 1 Company. Therefore, it is submitted that the petitioner has not

committed the offences punishable u/s 138 r/w Section 141 of the Negotiable Instruments Act, as alleged. No other submissions have been made.

By making above submissions and relying upon above decisions, it is requested to allow all these petitions and to quash and set aside the impugned

complaints/criminal cases.

9.01. All these petitions are opposed by Mr. R.D. Dave, learned Advocate appearing on behalf of the respondent No. 2 - original complainant -

Gujarat State Financial Corporation. He has submitted that as such and admittedly the petitioner is the signatory to the cheques in question and,

therefore, his role is distinct and separate than other Directors of the accused No. 1 Company and, therefore, he can be held liable for the offences

punishable u/s 138 r/w Section 141 of the Negotiable Instruments Act, as alleged.

9.02. Mr. R.D. Dave, learned Advocate appearing on behalf of the respondent No. 2 - original complainant has further submitted that even as on

today also in the Bank records, petitioner is authorized signatory of the accused No. 1 Company and the Bank Account is being operated by him.

9.03. Mr. R.D. Dave, learned Advocate appearing on behalf of the respondent No.

2 - original complainant has further submitted that as such

there was no intimation either to the complainant and, therefore, when the petitioner was signatory to the cheques in question and when the

cheques in question have been deposited within the period of its validity and the same have been dishonoured, it cannot be said that the petitioner

has not committed offences punishable u/s 138 r/w Section 141 of the Negotiable Instruments Act.

9.04. Mr. R.D. Dave, learned Advocate appearing on behalf of the respondent No. 2 - original complainant has further submitted that as the

petitioner was the signatory to the cheques in question his role is distinct than other Directors of the accused No.1 Company and, therefore, he can

be held liable for the offences punishable u/s 138 r/w Section 141 of the Negotiable Instruments Act, for the dishonour of the cheques issued by

the accused No. 1 company. In support of his above submission he has relied upon the decision of the Hon"ble Supreme Court in the case of

S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, .

By making above submissions and relying upon above decision, it is requested to dismiss all these petitions.

10. Heard the learned Advocates appearing on behalf of the respective parties at length.

10.01. At the outset, it is required to be noted that the impugned complaints/ criminal cases have been filed against the petitioner - original accused

No. 3 and others for the offences punishable u/s 138 r/w Section 141 of the Negotiable Instruments Act. It is not in dispute that the petitioner

herein-- original accused No. 3 is the signatory to the cheques in question and he had issued the cheques in question as authorized signatory of the

accused No.1 Company, and the said cheques are dishonoured. Therefore, considering the decision of the Hon"ble Supreme Court in the case of

S.M.S. Pharmaceuticals Limited (supra), more particularly paras 9, 10 and 19, it is clear that the role of the petitioner being signatory to the

cheques in question is distinct than other Directors and he can be held responsible and liable for the offences punishable u/s 138 r/w Section 141 of

the Negotiable Instruments Act.

10.02. Now, so far as the case of the petitioner that the petitioner had already resigned prior to deposit of the cheques in question with the Bank

and, therefore, he cannot be liable for the offences punishable u/s 138 r/w Section 141 of the Negotiable Instruments Act for the dishonour of the

cheques in question is concerned, it is to be noted that as such the petitioner is the signatory to the cheques in question and the cheques in question

have been deposited within the period of validity of the said cheques and the said cheques have been dishonoured. It is to be noted that even as on

today also in the Bank record, the name of the petitioner is maintained as the authorized signatory of the original accused No.1 Company and the

said Bank account can be operated by him.

10.03. Now, so far as the reliance placed upon the decision of the Hon''ble Supreme Court in the case of DCM Financial Services Limited (supra)

is concerned, on facts, the same would not be of any assistance to the petitioner and/or the same shall not be applicable to the facts of the present

case. In the case before the Hon''ble Supreme Court it was specifically found that the original complainant had knowledge about the resignation of

the said Director and still the said complainant deposited the cheques, which came to be dishonoured and thereafter he joined the said Director as

an accused for the dishonour of the cheques, knowing fully well that the said Director had already resigned much prior to the deposit of the

cheques. Therefore, in the aforesaid facts and circumstances and having knowledge of the original complainant with respect to resignation of the

said Director, the Hon''ble Supreme Court has observed that the said Director cannot be joined as an accused and the complaint/criminal

proceedings against the said Director came to be quashed and set aside by the Hon''ble Supreme Court. That is not the case here. In the present

case, admittedly it is not the case of the petitioner-original accused No. 1 signatory of the cheques in question that the original complainant

respondent No. 2 herein was aware about his resignation and still he deposited the cheques and the same are dishonoured and thereafter he has

joined the present petitioner as an accused for dishonour of the cheques In question.

11. Under the aforesaid circumstances, more particularly when even as on today also the name of the petitioner is continued in the record of the

Bank as authorized signatory of the original accused No.1 Company, no case is made out to quash and set aside the aforesaid impugned

complaints/criminal cases filed by the respondent No. 2 herein - original complainant, in exercise of powers u/s 482 of the Code of Criminal

Procedure. All these petitions deserve to be dismissed and are accordingly dismissed. Rule is discharged. Interim relief granted earlier, if any, stand

vacated forthwith in each of the petitions.

Considering the fact that the original complaints/criminal cases are of the year 2002, learned Magistrate is hereby directed to expedite the hearing

of the aforesaid complaints/criminal cases and decide and dispose of the same at the earliest, so as to achieve the object and purpose of the

Negotiable Instruments Act.

Registry is directed to send writ of this judgment and order to the concerned Magistrate at the earliest.

In the above view of the matter, this petition deserves to be dismissed issuing the identical directions to the concerned learned Magistrate as was

issued in the above mentioned order.

For the foregoing reasons, the petition stands dismissed. Considering the fact that the original complaint/criminal case is of the year-2002, learned

Magistrate is hereby directed to expedite the hearing of the said complaint/criminal case and disposed of the same at the earliest, so as to achieve

the object and purpose of the Negotiable Instruments Act. The Registry is directed to send writ of this judgment and order to the concerned

learned Magistrate at the earliest.