(2011) 03 DEL CK 0103

In the Delhi High Court

Case No : Criminal Rev. P. 546 of 2009 and Criminal M.A. 11687 of 2009

Anju Mahajan — APPELLANT

Vs

M.G. Capital Services Ltd. and Others — RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2011) 03 DEL CK 0103

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Avnish Ahlawat and Nitesh Kumar Singh, for the Appellant; Prashant Sharma, for the Respondent

Final Decision : Allowed

Judgement

Hima Kohli, J.—The present petition is filed by the Petitioner under Sections 397/401 read with Section 482 of the Cr.PC praying inter alia for quashing of the complaint filed by Respondent No. 1/complainant under Sections 138/141 of the Negotiable Instruments Act, and for setting aside the orders dated 20.07.2009 and 19.08.2009, by which notice was issued by the learned Metropolitan Magistrate to the Petitioner/accused No. 4.

2. Learned Counsel for the Petitioner states that the complaint filed by Respondent No. 1/complainant against her client, accused No. 4 is not maintainable as a bare reading of the complaint does not disclose any offence against the Petitioner. She submits that the learned Metropolitan Magistrate completely overlooked the fact that the cheque of Rs. 8 lacs, subject matter of the complaint filed by Respondent No. 1/complainant u/s 138 of the Negotiable Instruments Act, was issued by Respondent No. 3 (accused No. 2), Shri Ravi Gupta in his capacity as a partner of M/s Sunlit Securities. However, the memo of parties of the complaint filed by Respondent No. 1/complainant reveals that M/s Sunlit Securities was not impleaded in the present case. A perusal of the memo

of parties filed by Respondent No. 1/complainant reveals that M/s Sunlit Financial Services was impleaded as accused No. 1, with its address given as "C/o M/s Sunlit Securities, Dalhousie Road, Pathankot". Respondent No. 3 and the Petitioner herein were impleaded as partners of M/s Sunlit Securities. It is the case of the Petitioner that M/s Sunlit Financial Services is a private limited company, registered under the Companies Act. The certificate of incorporation of M/s Sunlit Financial Services Pvt. Ltd. is enclosed as Annexure P-4. The said company was incorporated under the Companies Act on 06.04.1999. The Articles of Association and the Memorandum of Association are also placed on record. All these documents are stated to have been filed before the learned Metropolitan Magistrate.

3. Learned Counsel for the Petitioner submits that the reliance placed by the complainant on the partnership deed of M/s Sunlit Securities is misconceived. She further states that a perusal of the complaint filed by Respondent No. 1/ complainant also does not reveal the consideration, which formed the basis of issuance of the cheque to the complainant and no role whatsoever has been attributed to the Petitioner in the complaint. In this regard, she relies on the complaint enclosed as Annexure P-1 and the affidavit by way of evidence filed by the Director of Respondent No. 1/complainant enclosed as Annexure P-2. The attention of this Court is also drawn to the notice dated 19.08.2009 addressed by the learned Metropolitan Magistrate to the Petitioner, wherein she has been described as partner of the firm, M/s Sunlit Financial Services. It is submitted that the Petitioner was never a partner of M/s Sunlit Financial Services, which is a private limited company. It is also submitted that the Petitioner had filed an application before the court below seeking discharge in the present case, which was disallowed. A second application was filed by the Petitioner with a request to the learned Metropolitan Magistrate praying that Respondent No. 3 (accused No. 2) should not be discharged from the matter based on a settlement arrived at between him and the complainant. The said application was also not considered by the learned Metropolitan Magistrate.

4. It is submitted by the learned Counsel for the Petitioner that in the order dated 07.12.2004 passed by the learned Metropolitan Magistrate, it was recorded that Respondent No. 3 had handed over a draft of Rs. 25,000/- to Respondent No. 1/complainant, who had duly received the same. On 05.08.2005, counsel for Respondent No. 1/complainant requested that a statement of the complainant may be recorded to the effect that the complainant had settled all his grievances with Respondent No. 3 and that the case against him may be dropped. She submits that the amount received in settlement was not mentioned by the complainant at any stage of the proceedings. Nor were the terms and conditions of the settlement arrived at with Respondent No. 3 indicated and further, the complainant also did not take any steps against Respondent No. 4, Mrs. Sushma Gupta, who had been made a co-accused by the complainant in the pending proceedings before the learned Metropolitan Magistrate. Pertinently, Respondent No. 4 is the wife of Respondent No. 3.

5. Counsel for Respondent No. 1/complainant states that the transaction, for which the cheque had been issued to the complainant, was with M/s Sunlit Securities. He asserts that the complainant never dealt with M/s Sunlit Financial Services Pvt. Ltd. He seeks to rely on the partnership deed of M/s Sunlit Securities to state that the same indicates that the business of the partnership firm was being done under the name and style of M/s Sunlit Financial Services w.e.f. 01.08.1998. However, the very same partnership deed relied upon by Respondent No. 1/complainant reveals, in para 1 thereof, that it was agreed between the partners that the business of the firm would be carried on under the name and style of M/s Sunlit Securities with its head office at Dalhousie Road, Pathankot.

6. Pertinently, the memo of parties filed by Respondent No. 1/complainant reveals that the complainant had impleaded M/s Sunlit Financial Services as an accused without impleading M/s Sunlit Securities. Counsel for Respondent No. 1/ complainant is unable to explain the facts and circumstances in which M/s Sunlit Financial Services, and not M/s Sunlit Securities, was impleaded as accused No. 1 in the complaint when it is his own case that the cheque was issued by Respondent No. 3 as a partner of M/s Sunlit Securities and the Petitioner and Respondent No. 4 are stated to be the partners of the said firm. Further, a perusal of the complaint bears out the submission of the counsel for the Petitioner that there is no specific averment in the complaint with regard to the Petitioner, except for a bald and innocuous averment in para 3 of the complaint, to the effect that the accused persons had issued a cheque of Rs. 8 lacs against the liabilities towards the complainant company. Further, the affidavit by way of evidence filed by the complainant shows that in para 3 thereof, accused No. 1 has been described as a company and not as a partnership firm, as contended by the counsel for Respondent No. 1/complainant, and further, Respondents No. 3 & 4 and the Petitioner have been described as partners of accused No. 1/company. The list of witnesses enclosed with the complaint shows that the complainant has cited the officer of the Pathankot Hindu Co-operative Urban Bank Limited as witness No. 2 and has called upon him to produce the statement of account of "M/s Sunlit Financial Services C/o M/s Sunlit Securities".

7. The Petitioner has placed on record a letter dated 26.07.2001, issued by Respondent No. 3 (accused No. 2) addressed to the Branch Manager of his bank, stating inter alia that the partnership firm, M/s Sunlit Securities was no longer carrying on business and hence, Account No. 525 in the name of M/s Sunlit Securities be closed and that the cheque book of the account No. 525 had since been lost. It is from the very same account No. 525 that the cheque dated 01.03.2002 was issued in favour of Respondent No. 1 and signed by Respondent No. 3 as a partner of M/s Sunlit Securities.

8. From the above, it is quite apparent that there are a number of contradictions in the complaint, which are apparent on the face of the record. Even as per the provisions of Section 138 of the Negotiable Instruments Act, for a complaint to

be maintained under the aforesaid provisions, the complainant is required to impaled a person, who has drawn the cheque on an account maintained by him with a banker, for payment of any amount of money to another person from out of that account. In the present case, admittedly the cheque was drawn by Respondent No. 3, Mr. Ravi Gupta in his capacity as a partner of M/s Sunlit Securities, which firm has not been impleaded by the complainant. Further, the learned Counsel for the Petitioner is justified in submitting that the complainant having settled all his disputes with one of the partners, namely Respondent No. 3 and having decided not to proceed against Respondent No. 4, cannot prosecute the present complaint against the Petitioner alone, without even revealing the exact amount purportedly received by the complainant in settlement with the remaining co-accused. Learned Counsel for Respondent No. 1/complainant has also not been able to indicate from the record that any specific amount was mentioned as having been received from Respondent No. 3 (accused No. 2) for dropping him from the case. Having regard to the fact that the cheque in question was issued by the Respondent No. 3 (accused No. 2), who Respondent No. 1/complainant has decided not to prosecute, on account of his having received some undisclosed amount from the said Respondent, Respondent No. 1/ complainant now cannot be permitted to continue prosecuting the complaint against the Petitioner alone, more so when there was no specific allegation leveled in the complaint against her.

9. In view of the aforesaid facts and circumstances, it is held that the complaint filed by Respondent No. 1/complainant against the Petitioner is not maintainable. As a result, the petition is allowed and the complaint and the orders dated 20.07.2009 and 19.08.2009 passed by the learned Metropolitan Magistrate are quashed and set aside.

10. A copy of this order be forwarded to the trial court for information.

