

(2008) 01 CAL CK 0066
In the Calcutta High Court
Case No : C.R.R. No. 2704 of 2006

Arunodoya Plantations Ltd. and Another APPELLANT
Vs
The State of West Bengal and Another RESPONDENT

Date of Decision : 28-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142, 142(B)

Citation : (2008) 4 BC 415 : (2008) 2 CALLT 166

Hon'ble Judges : Kalidas Mukherjee, J

Bench : Single Bench

Advocate : Debasish Roy, Sandipan Ganguly, Paritosh Sinha, Amitava Mitra, Dolan Das Gupta and Lopamudra Dhar, for the Appellant; Pulakesh Banerjee, for Opposite Party No. 2, for the Respondent

Judgement

Kalidas Mukherjee, J.—This application u/s 482 Cr PC has been filed for quashing the proceedings in case No. C-5341 of 2001 u/s 138 of the Negotiable Instruments Act pending before the Court of learned 5th Metropolitan Magistrate, Calcutta.

2. The case u/s 138 of the Negotiable Instrument Act was filed before the learned Magistrate by the O.P. No. 2 herein against the petitioners herein alleging that accused No. 2 at the time of the commission of the offence was in-charge of and was responsible to the accused No. 1 Company for the conduct of the business. In the discharge of its liability towards the complainant the accused Company issued two cheques bearing No.070561 dated 15.6.2001 amounting to Rs. 3,00,000/- and cheque No. 070568 dated 31.7.2001 amounting to Rs. 5,00,000/- drawn on UCO Bank, India Exchange place, Kolkata.

3. Within the period of validity of the said cheques, the complainant presented the same for payment through its banker, State Bank of India, Overseas Branch at La Martiniere, Kolkata-700017. On 13.08.2001 the complainant received intimation from its banker that the aforesaid cheques issued by accused No. 1

has been returned unpaid with the remark "insufficient fund". By a notice dated 18.8.2001 sent by registered post with acknowledgement due the complainant made the demand to the accused for payment in respect of the said amount of the cheques. The said notice was served upon the accused on 27.08.2001. The acknowledgement card was received by the learned Advocate of the complainant on 10.09.2001. In spite of being served with notice the accused failed and neglected to pay the amount of cheques to the complainant within the stipulated period u/s 138 of the Negotiable Instrument Act. For the said reasons, the complaint u/s 138/141 of the Negotiable Instrument Act has been filed before the learned Magistrate.

4. Learned counsel appearing on behalf of the petitioners herein submits that the accused persons received notice on 27.8.2001 and the cause of action arose on 11.9.2001 and, therefore, the complainant ought to have filed the complaint by 11.10.2001. It is submitted that the learned Chief Metropolitan Magistrate has submitted a report as per order of this Court dated 15.6.2007 stating that the petition of complaint was filed before the learned Court below on 19.10.200 i.e. eight days after the expiry of the period of limitation. The learned Counsel further submits that the amendment of Section 142(b) of the Act came into force after the filing of the petition of complaint and, therefore, the said amendment would not be applicable in the instant case.

5. It is contended that although it has been held in the decision reported in 2006(2) ICLR 300 [R.K. Chawla and Anr. v. Goa Antibiotic. & Pharmaceutical Ltd. and Anr.] that the amendment will apply in pending cases, that would not come in the aid of the complainant, in as much as, at the time of filing of the petition of complaint no application for condonation of delay was filed along with the petition of complaint. It is submitted that the petition of complaint filed before the learned Court below was time barred and the learned Magistrate was not justified in issuing process.

6. The learned Advocate appearing on behalf of the O.P. submits that the amendment of Section 142(B) of the Negotiable Instrument Act will apply in pending cases and the point of limitation was not urged before the learned Magistrate. It is contended that the point of limitation is to be decided by the learned Court below and the learned Counsel has referred to and cited a decision reported in 2007 (3) ICR 543 [C.C. Alavi Haji v. Palapetty Muhammed and Anr.] in support of his contention.

7. It appears that the accused No. 2 has filed a petition before the learned Court below praying for discharge which was rejected by the learned Court on 10.03.2006. The point of limitation was not urged before the learned Court below. The proviso to Section 142(B) of the Act runs thus:

Provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

8. So the point of limitation is to be raised before the learned Magistrate before whom the complaint is filed. Since the point of limitation was not urged before the learned Magistrate, I think that this Court should not go into the merits with regard to the point of limitation and this point is left open. If this point is raised in the learned Court below, the learned Magistrate will decide the same according to law. At this stage I do not find any ground to quash the proceedings in the exercise of jurisdiction u/s 482 Cr.PC.

The application u/s 482 Cr.PC is thus disposed of accordingly.

9. Let a copy of this order along with the L.C.R. be sent to the learned trial Court immediately. Urgent Xerox certified copy, if applied, be handed over to the parties as early as possible.