

(2010) 09 DEL CK 0109
In the Delhi High Court
Case No : Criminal M.C. 2452 of 2009

Bank of India

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 10-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 15, 16, 9
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2)

Citation : (2010) 119 DRJ 401

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Manjula Gandhi, for the Appellant; O.P. Saxena, APP for State, P.K. Dham and Rahul Tandon for R-2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—This petition u/s 482 Cr.PC. raises an important issue as to who is the "Holder in Due Course" of a cheque.

2. The brief facts relevant for the purpose of deciding this petition are that the petitioner bank filed a complaint against the respondent No. 2 Charanjeev Singh Ahluwalia, a director of respondent No. 3, and respondent No. 3 M/s. Delta Airlaid Hygiene Pvt. Ltd. stating that the accused/respondent No. 2 had taken credit facilities from the bank to the tune of

1.10 crore and availed these limits and did not pay the dues. The bank served a notice u/s 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests (SARFAESI) Act, 2002 upon the accused and called upon the accused to discharge this liability by paying the due amount of the bank to the tune of

1,04,72,444/- along with interest @ 16 per cent per annum within 60 days.

Accused Charanjeev Singh Ahluwalia issued two cheques in the name of his company for the sum of

70.00 lac and

34.00 lac drawn on State Bank of Bikaner & Jaipur, Karol Bagh branch and handed over the cheques to the complainant bank in due course of business to clear the outstanding dues towards the complainant bank assuring that the cheque would be honoured. The cheques were dishonoured with remarks of the bank "funds insufficient" and "exceeds arrangements" and the complainant bank filed a complaint u/s 138 of Negotiable Instrument Act against the respondent No. 2 Director of the company.

3. There is no dispute that the Director of the company Charanjeev Singh Ahluwalia had issued these cheques from his personal account in favour of the company so that the amount so deposited in the account of the company that had availed overdraft and other facilities from the bank is utilized for discharging dues of the bank. Otherwise, there was no reason for the Director to issue these cheques in favour of the company. There was no transaction between respondent No. 2, Director and respondent No. 3, his company requiring issuance of these cheques. On dishonour of the cheques, the bank filed complaint claiming itself to be the "Holder in Due Course". While learned MM issued a notice u/s 251 Cr. P.C. on the accused persons, on revision, the learned ASJ observed that the bank was not a "Holder in Due Course" since there was no endorsement u/s 16 of N.I. Act made on the cheque and the status of complainant bank, under these circumstances, cannot be treated that of a "Holder in Due Course".

4. Section 9 of the N.I. Act defines "Holder in Due Course" as under:

"Holder in due course"- "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if [payable to order], before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

5. It is apparent from this definition that for being a "holder in due course" of a bill or a cheque it was not necessary that there should be an endorsement on the bill or cheque. "Holder in due course" has been defined as any person, who for consideration, becomes the possessor of the promissory note or cheque. There is no doubt that endorsee or the payee of such a bill or cheque are also considered as "holder in due course", but, it is not the case that payee or endorsee alone are holders in due course. A person whose banking account is overdrawn if negotiates with his bankers a cheque, drawn by a third party, to reduce the overdraft, the banker becomes a holder for value of the cheque. The pre-existing debt of the overdraft is a sufficient consideration for the negotiation of a cheque to the banker. If a person handovers cheque to the bank with the clear understanding to the bank that cheque is towards the debt payable by the

company, though the cheque remains in the name of the company but the bank becomes holder of the cheque in due course. What is to be seen is that whether the bank has come into possession of the cheque for a value pursuant to a contract between the parties express or implied. The credit given by a bank to its customer can be discharged by any third person and when the third person issues cheque in the name of the customer assuring bank that this would wipe out the overdraft or the other dues payable by the customer then the cheque in the hands of the bank is for consideration and the bank is "holder in due course". It is not necessary that the cheque should be endorsed in favour of the bank. What is to be seen is if the bank becomes holder for value and comes in possession of the instrument for consideration. The existing debt is always considered as a valid consideration. In India Saree Museum v. P. Kapurchand 1991 (1) BC 344, Karnataka High Court held that it is not only the endorsee who becomes a holder in due course but also a person who gets possession of the negotiable instruments for consideration, which means, he need not be an endorsee to be a holder in due course. Once it is established to the satisfaction of the Court that the cheques were issued for discharge of the debt of the company, the bank who had given this debt to the company would be considered as "holder in due course". The "holder in due course" of cheque means any person entitled to receive or recover the amount due thereon from the parties thereto.

6. The Trial Court relied upon a judgment delivered by Punjab and Haryana High Court in Punjab National Bank v. Hingiri Traders 2004 (1) DRC 260. With due respect to Punjab & Haryana High Court, I consider that the view of Punjab & Haryana High Court was not correct. Punjab & Haryana High Court had read Section 9 of the Negotiable Instrument Act along with Section 15 and 16 thereof. Section 9 of N.I. Act is an independent provision under Negotiable Instrument Act and it cannot be confused with the provision regarding endorsee or endorsement. "Holder in due course" has to be considered independent to the endorsee or endorsement and where a cheque is issued by a Director to discharge the debt of the company payable towards the bank, I consider that the bank is "holder in due course", even if there is no endorsement made on the cheque, because, the moment amount of the cheque had gone to the account of the company, it was to go the bank towards the loan taken by the company. In this case the cheques were solely issued for the discharge of the debt.

7. I, therefore, consider that the decision of the Sessions Court was not on sound footing. The order of the Sessions Court is hereby set aside. Petitioner is held to be "holder in due course" of the cheques. The complaint of the petitioner is held to be maintainable.

8. The parties shall appear before the concerned ACMM on 23rd September, 2010 and the ACMM shall mark it to the concerned MM.