

(2005) 10 CHH CK 0004

In the Chhattisgarh High Court

Case No : Misc. Criminal Case No. 1419 of 2005

Bellary Steels and Alloys Ltd. and Another

APPELLANT

Vs

Vendana Ispat Private Ltd. and Another

RESPONDENT

Date of Decision : 27-10-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 138A

Citation : (2006) 2 MPHT 51

Hon'ble Judges : Dhirendra Mishra, J

Bench : Division Bench

Advocate : F. Mirza, for the Appellant; Manish Sharma and A.S. Kachhwaha, Panel Lawyer for Respondent No. 2/State, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioners have preferred this petition u/s 482 of the Code of Criminal Procedure for quashing the criminal proceedings registered as Complaint Case No. 1782/2002 in the Court of Judicial Magistrate First Class, Raipur u/s 138 of the Negotiable Instruments Act on the complaint of respondent No. 1.

2. Brief facts of the case are that in the normal course of business dealing between the petitioner No. 1 and the respondent No. 2 the former had given a post dated cheque dated 1-9-1998 for Rs. 14,20,689/- drawn on Punjab National Bank, Industrial Finance Branch, Bangalore and payable to respondent No. 1. The said cheque was presented for payment to their Banker -- State Bank of India, Industrial Finance Branch, Bangalore, in the first week of September, 1998, through collection. However, the cheque was returned by the Banker of petitioner No. 1 with an endorsement "please present again" with a cheque return memo dated 15-9-1998. After receiving the original cheque the respondent No. 1 caused a legal notice dated 29-9-1998 to the petitioner No. 1 through his advocate informing that the cheque had bounced on its presentation and further calling upon him to make the payment for the said cheque within a period of 15

days from the date of receipt of said notice. When the payment was not made as per the notice of demand criminal complaint u/s 138 of the Negotiable Instruments Act was filed by respondent No. 1 on 11-11-1998 vide Annexure P-9.

3. Respondent No. 1 examined one Durga Prasad Malviya, the Accountant of his Company in support of the complaint on 18-4-2000. After recording the statement of the above said witness of respondent No. 1 the learned Judicial Magistrate First Class registered the offence u/s 138 of the Negotiable Instruments Act against the petitioners and directed issuance of summons against them. The petitioners thus aggrieved by the registration of the offence u/s 138 of the Negotiable Instruments Act and continuance of the criminal proceedings against them, have filed this petition for quashment the same.

4. Learned Counsel for the petitioners submits that from bare perusal of the cheque return memo it is evident that the cheque was returned with a specific remark "please present again" which can not be construed as dishonouring the cheque. She further submits that though petitioner No. 2 has also been arrayed as an accused, no notice of demand in writing has been issued to him at any point of time as per Section 138 of the negotiable Instruments Act and for this reason the criminal proceedings initiated against the petitioners deserve to be quashed. It is further submitted that after receiving the notice of demand from respondent No. 1 in conformity with proviso (b) to Section 138 of the Negotiable Instruments Act, 1981, the petitioner No. 1 as the drawer of the cheque had remitted a large sum of Rs. 14 lakhs by a bank draft against the cheque amount of Rs. 14,20,689/- to respondent No. 1 with a specific request to return the cheque vide Annexure P-7. The draft was received by respondent No. 1 on 16-10-1998 and respondent No. 1 encashed it by depositing in their account with State Bank of India, Raipur and thereafter without disclosing the fact of receipt and encashment of the draft the complaint was filed against the petitioners on 11-11-1998. Thus it is submitted that the respondents have not approached the Court with clean hands and have suppressed the material facts in their complaint as also in their statements on oath recorded u/s 200 of the Code of Criminal Procedure wherein witness D.P. Malviya has stated in Paragraph No. 1 of his statement that the cheque was returned with an endorsement "insufficient fund", which is an absolutely incorrect statement.

5. On other hand learned Counsel for respondent No. 1 submits that it is not disputed that the cheque for a sum of Rs. 14,20,689/- was received by him and the same was presented for encashment and was later on returned with an endorsement "please present again" and the cheque was not duly honoured. He, however, does not dispute that after receiving the notice the petitioner No. 1 sent a bank draft for a sum of Rs. 14 lakhs with a covering letter to the effect that a draft dated 8-10-1998 worth Rs. 14 lakhs against the cheque No. 797204, dated 1-9-1998 was being sent. In the said covering letter a request to return the original cheque immediately was also made. The said draft with covering letter was received by respondent No. 1 on 16-10-1998 and it is only thereafter that

the said criminal complaint vide Annexure P-9 was filed by respondent No. 1. Counsel for respondent No. 1 further submits that the notice was served on the petitioner No. 1 demanding the amount against the said cheque but when the petitioners failed to pay the total cheque amount of Rs. 14,20,689/-, the criminal complaint case was filed against them and the Court below on the basis of material available on record has registered the aforesaid offence against the petitioners, which does not call for any interference.

6. Learned Counsel for respondent No. 1 relies on the decision of the Supreme Court in the matter of Goaplast Pvt. Ltd. Vs. Shri Chico Ursula D'Souza and Another, , and submits that once a cheque is issued by a drawer and the same is returned by its banker on any pretext including the endorsement "to present again" it amounts to dishonour of the cheque within the meaning of Section 138A of the Negotiable Instruments Act and if the drawer fails to pay the cheque amount after receiving notice of demand ingredients of Section 138 of the Negotiable Instruments Act are complete and the complaint can not be dismissed on such facts as the threshold.

7. The case referred to above by respondent No. 1 is distinguishable on facts inasmuch as in the above case the cheques were returned unpaid with an endorsement "to present again" but from perusal of the said judgment it appears that after issuing the post-dated cheques, drawer had written to stop the payment and on such direction of the drawer the cheque was not honoured and the Supreme Court referring to the object of Chapter XVII of the Negotiable Instrument Act has held that by stoppage of payment of post-dated cheques drawer can not be permitted to escape the consequences of Section 138 of the Negotiable Instrument Act.

8. Scope of interference u/s 482 of the Code for quashing the criminal proceedings has been elaborated time and again by the Apex Court. In the recent judgment of the Supreme Court in the matter of Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, , it has been held that inherent jurisdiction is though to be exercised sparingly, carefully and with caution and only when such exercise is justified by the test specifically laid down in Section 482 of the Code, power to be exercised ex debito justitiae to prevent abuse process of Court, but it should not be exercised to stifle legitimate prosecution.

9. In the instant case, it is not disputed that the cheque in question was returned with an endorsement "please present again" but the complainant instead of presenting it again issued notice to the petitioner No. 1 alone calling upon him to pay the amount of cheque of Rs. 14,20,689/-. It is also not disputed that the notice was received by petitioner No. 1 on 7-10-1998 and after receiving the notice a draft for Rs. 14 lakhs was dispatched to the complainant with a request to return the original cheque after receipt of the draft. Draft was, undisputedly, received by the complainant on 16-10-1998 and the same was deposited by the complainant in the Bank for encashment and it is after obtaining the amount of

Rs. 14 lakhs by encashment of the said draft, instead of returning the original cheque the criminal complaint vide annexure P-9 was filed on 11-11-1998 suppressing the material fact that a huge sum of Rs. 14 lakhs against the Bank draft, had been received by respondent No. 1. The statement u/s 200 of the Code of Criminal Procedure was recorded on behalf of the complainant on 18-4-2000, i.e., after almost one and a half year of the receipt of Rs. 14 lakhs and in the said statement also the fact of receiving Rs. 14 lakhs has not been disclosed. On the contrary incorrect statement that the cheque was returned on 29-9-1998 with an endorsement "insufficient fund" has been made.

10. The factual scenario frescoed above goes to show that the complainant had not come to the Court with clean hands as he did not reveal the fact that after issuing the legal notice he had received a sum of Rs. 14 lakhs by encashing the Bank draft sent by petitioner No. 1 and even then did not return the original cheque which he was very much required to do as soon as the payment offered by petitioner No. 1 was accepted by him.

11. Thus, it is clear as broad day light that the complainant has deliberately concealed the material facts and the complaint has been filed by him maliciously with an ulterior motive just to harass the petitioner No. 1, and thus it is nothing but a sheer abuse of process of law and thus it is a case where the power u/s 482 of the Cr.PC should be duly exercised.

12. In the light of aforesaid discussion the petition succeeds and the criminal proceeding registered as Complaint Case No. 1782/2002 on the file of JMFC Raipur, is hereby quashed.