(2010) 12 DEL CK 0352

In the Delhi High Court

Case No : Criminal M.C. No''s. 4918 and 4936 of 2006

Bhupinder Singh Bhogal APPELLANT

Vs

G.E. Capital Transportation Financial Services Limited RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 7

Citation : (2010) 12 DEL CK 0352

Hon'ble Judges : A.K. Pathak, J

Bench : Single Bench

Advocate : Kartickay Mathur, for the Appellant; None, for the Respondent

Final Decision : Disposed Off

Judgement

A.K. Pathak, J.—The abovenoted petitions are in similar facts, inasmuch as question of law involved therein is same, thus, are being disposed of together.

2. By these petitions, Petitioners seek quashing of complaint case Nos. 1196/2002 and 1197/2002 u/s 138 of the Negotiable Instruments Act, 1881 (for short hereinafter referred to as "the Act") filed by the Respondent before the Trial Court.

3. It is contended that the cheques involved in the complaints had been issued by M/s N.N. Transportation & Company, a proprietorship firm. Petitioners have nothing to do with the said firm nor they had issued and signed the cheques. They are not ''drawer'' of the cheques, therefore, are not liable for the prosecution for the offence committed by the said firm, inasmuch as provisions of Section 141 of the Act were not attracted in this case. Thus, it is contended that the complaints be quashed qua the Petitioners.

4. Photocopies of cheques have been annexed along with the petitions, a perusal whereof clearly shows that the same had been issued from the account of M/s N.N. Transportation & Company. Rubber stamp of the said firm affixed on the cheques also indicates that cheques had been issued on behalf of proprietorship

firm. Petitioners, who have been impleaded as accused Nos. 2 to 4 in the complaint are neither sole proprietor of the firm nor are signatories of the cheques. Sole proprietorship firm is nothing but the creation of the sole proprietor. It has no separate legal entity. Any reference made to proprietorship firm shall include its sole proprietor and vice versa. In view of this, provisions of Section 141 of the Act would not be attracted in the present case.

5. At this stage, relevant it would be to extract Section 138 of the Act, which reads as under:

Dishonor of cheque for insufficiency, etc, of funds in the account-

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for (a term which may be extended to two years) or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless -

(a) xxx

(b) xxx

(c) xxx

(emphasis supplied)

6. Section 7 of the Act envisages that the maker of a bill of exchange or Cheque is called the "drawer"; the person thereby directed to pay is called the "Drawee".

7. A conjoint reading of Sections 7 and 138 of the Act clearly indicates that it is only the drawer of the cheque who can be held responsible for the offence u/s 138 of the said Act. Exception to this rule is provided in Section 141 of the Act, which makes the persons other than drawer vicariously liable for the offence u/s 138 of the Act, but only if the drawer is a company or firm or association of individual and in such an eventuality, all such persons, who at the time when offence was committed, were in charge or responsible for the conduct of the business of such company or firm or association of individuals, would be deemed to be guilty for the offence u/s 138 of the said Act.

8. Admittedly, cheques had not been issued either by a company or partnership firm or association of individuals, inasmuch as, Petitioners have not been impleaded in any such capacity by making a specific averment in this regard in the complaint.

9. In Srikant Somani and Others Vs. Sharad Gupta and Another, , it has been held that the offence u/s 138 of the Act is said to had been committed by the person who issues the cheque and not the person on whose behalf the cheque is issued unless, however, the person on whose behalf the cheque is issued is a company or a partnership firm. Vicarious liability is available only in respect of those offences committed by a company as provided in Section 141 of the Act. Section 138 makes it very clear that only the person who draws the cheque is liable for the offence.

10. In M/s Gujarat Oleo Chem. Ltd. and Ors. v. State and Anr. 2010 (1) JCC 84 it has been held that it is only the signatory of cheque i.e. drawer of the cheque, who had drawn the cheque in his individual capacity and from his individual account, would be liable for prosecution u/s 138 of the said Act and not the directors of the company. In Lalit Jain and Others Vs. State and Others, , it has been held that it is only the drawer of the cheque who can be held responsible for the offence u/s 138 of the said Act.

11. In the present case, Petitioners were neither the persons who drew the cheques nor they can become liable by virtue of Section 141 of the Act, thus, they cannot be prosecuted for the offence u/s 138 of the Act.

12. For the foregoing reasons, complaint cases bearing numbers 1196/2002 and 1197/2002, pending in the court of Metropolitan Magistrate, are quashed qua the Petitioners only.

13. Petitions are disposed of in the above terms.

