(2009) 11 KAR CK 0040

In the Karnataka High Court

Case No : Criminal Petition No. 43 of 2004

B.V.V. Paper Industries Pvt. Ltd. APPELLANT

Vs

New Millennium Paper and Chemicals Pvt. Ltd. and Matha Agencies RESPONDENT

Date of Decision : 19-11-2009

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

Citation : (2010) ILR (Kar) 3094 : (2010) 1 KCCR 455 : (2011) 6 RCR(Criminal) 925

Hon'ble Judges : Arali Nagaraj, J

Bench : Single Bench

Advocate : Chandrashekar, for C.V. Nagesh, for the Appellant; J. Imayan and M. Shivappa, for R1 and B.N. Maheshwara, for R2, for the Respondent

Final Decision : Dismissed

Judgement

Arali Nagaraj, J.—Accused Nos. 1 and 2 in CC No. 17190/2003 (PCR No. 5532/2003) on the file of the learned XIII Additional Chief Metropolitan Magistrate, Bangalore (hereinafter referred to as ''Trial Court'' for short) have challenged in this petition u/s 482 Cr.PC the order dated 14.10.2003 passed in PCR No. 5532/2003, directing registration of criminal case against accused Nos. 1 to 3 for the offence u/s 138 of Negotiable Instruments Act. Pursuant to the said order, CC No. 17190/2003 came to be registered against accused Nos. l to 3 therein of whom, the present petitioners are respectively accused Nos. l and 2.

2. State in brief the case of the complainant viz: M/s. New Millennium Paper and Chemicals Pvt. Ltd., Bangalore (who is respondent No. 1 herein) is as under:

(a) The complainant has been a Private Limited Company incorporated under the Companies Act. Accused No. 1 viz : M/s. B V V Paper Industries Ltd. is also a Limited Company incorporated under the Companies Act having its Central office at Swaminathapuram, Madathukulam in the State of Tamil Nadu, of which, the 2nd accused Mr. B V V S S Krishna Prasad has been a Director. The 3rd accused viz. Mr. P K Hamza has been Managing Director of M/s. Matha Agencies, Vayalathur, Tirur, Mallapuram in the State of Kerala.

(b) The complainant Company (respondent No. 1 herein) supplied to accused Nos. l and 2 the varieties of papers to the extent of Rs. 9,56,360/- and received from accused Nos. 1 and 2 a sum of Rs. 6,56,091/- as part payment and thus the balance of Rs. 3,00,269/- was yet to be paid by accused Nos. l and 2 to the complainant as on 7.1.2003. Therefore, accused Nos. 1 and 2 endorsed in favour of the complainant the cheque No. 959857 dated 8.1.2003, which was issued to them by accused No. 3 viz: P K Hamza, the Managing Director of M/s. Matha Agencies of Kerala for Rs. 2,50,000/-. The accused Nos. 1 and 2 undertook to arrange for prompt realisation of the said cheque. But they failed to do so. Therefore, when the said cheque was presented to the Bank by the complainant on 28.1.2003, it came to be returned to the complainant on 7.2.2003 by the Banker with an endorsement as ''payment stopped by the drawer''.

(c) After the said cheque came to be bounced, the complainant got issued statutory notice to all the accused Nos. l to 3 calling upon them to pay the amount under the said cheque with interest thereon at 24% p.a. from the date of cheque. Despite receipt of the said notice, accused Nos. l to 3 did not send any reply to it nor did they comply with it. Therefore the complainant filed the said complaint against accused Nos. 1 to 3.

3. On the basis of the said complaint and the sworn statement of the complainant, the Trial Court, by its impugned order dated 14.10.2003 passed in PCR No. 5532/2003, ordered registration of Criminal Case against all the accused Nos. l to 3. Therefore, CC No. 17190/2003 came to be registered against them.

4. The petitioners herein who are respectively accused Nos. l and 2 in the said case, have sought for setting aside the impugned order issuing process and also quashing of the entire proceedings in the said case as against them.

5. On 12.8.2009 the arguments of Sri Chandrashekar, the learned Advocate on behalf of Sri C V Nagesh, the learned Senior Counsel for the petitioners, were heard and the appeal came to be adjourned to 19.8.2009 for further arguments on behalf of the petitioners. Thereafter, on 1.9.2009, arguments for Sri C V Nagesh, the learned Senior Counsel, were heard and the appeal came to be adjourned to 8.9.2009 for hearing the arguments of the learned Counsel for respondent Nos. 1 and 2, who are respectively the complainant and accused No. 3 before the Trial Court. Despite sufficient opportunity, the learned Counsel for the respondents No. 1 and 2 did not choose to address their arguments. Therefore, their arguments came to be taken as heard.

6. I have perused the entire averments in the complaint, the ordersheet in the said case and also the sworn statement of the complainant, the copies whereof are furnished by the petitioners. I have also perused the copies of documents such as cheque in question, endorsement issued by the banker, statutory notice issued by the complainant to accused Nos. l to 3 therein etc., the copies whereof

are also furnished by the petitioners in this case.

7. Sri C V Nagesh, the learned Senior counsel for the petitioners strongly contended that the petitioners are not the "drawers'' of the cheque in question and therefore the complainant, being holder in due course, of the cheque in question, could not proceed against them for the offence u/s 138 of NI Act inasmuch as it is only the "drawer of a cheque'' who could be prosecuted for the said offence and therefore, the proceedings in the said criminal case against these petitioners deserve to be quashed. He further contended that by virtue of the ''endorsement'' made by these petitioners on the cheque in question in favour of the 1st respondent - complainant, the complainant himself, being the Holder in due course'', stepped into the shoes of these petitioners and became entitled to prosecute the 3rd accused, who had issued the cheque in question in favour of these petitioners and therefore the learned ACMM committed serious error in issuing process against these petitioners as accused Nos. 1 and 2 in the said case.

8. As could be seen from the averments in the complaint stated supra, it is the case of the complainant that he supplied to these petitioners the papers/goods worth Rs. 9,56,360/- and they paid to him a sum of Rs. 6,56,091/- leaving a balance of Rs. 3,00,269/- as on 7.1,2003 and therefore towards part payment of the said balance due by them to the complainant, they (petitioners) endorsed the cheque in question, which they had received from the 3rd accused. Therefore, it is clear that the complainant has to establish in his said case the existence of legally enforceable debt of Rs. 3,00,269/- payable to him by the petitioners herein (A1 and A2) as on the date of endorsement said to have been made by them in his favour on the cheque in question and hence he became holder in due course of the said cheque. He has to establish further as against these petitioners that towards part payment of the said legally enforceable debt, the petitioners made the said endorsement on the said cheque. Besides this, in order to succeed against the 3rd accused, the complainant has to establish further that there existed legally enforceable debt payable by accused No. 3 to accused Nos. l and 2 as on the date of the said cheque and he had issued the said cheque in favour of accused Nos. l and 2 towards discharge of the said debt.

9. It is not the case of the petitioners (A1 and A2) that they admit the case of the 1st respondent -complainant that they were liable to pay to him a sum of Rs. 3,00,269/- as on 7.1.2003 and therefore they endorsed the said cheque in his favour as averred by the 1st respondent - complainant in his complaint. This being so, in the absence of these petitioners, respectively as accused Nos. 1 and 2 in the said case before the Trial Court, it would not be possible for the complainant to prove his case against both the accused Nos. l and 2 and also to prove the existence of legally enforceable debt payable by the 3rd accused to the petitioners - accused Nos. l and 2 towards discharge of which the cheque in question is said to have been issued by him (A3) in favour of the petitioners {accused Nos. l and 2).

10. If the complainant, as the holder in due course, of the cheque in question, has stepped into the shoes of these petitioners (A1 and A2) as payees'' in respect of the said cheque, these petitioners themselves stepped into the shoes of the accused No. 3. the drawer of the said cheque as against the complainant. Though the 1st respondent - complainant is stranger to the transactions between accused No. 3, the ''drawer'' of the said cheque and the accused Nos. 1 and 2, the payees thereof, he has to prove the case of accused Nos. 1 and 2 against accused No. 3 as to the accused No. 3 issuing in favour of accused Nos. l and 2 the cheque in question towards discharge of legally enforceable debt payable by him to them, which he cannot do, in the absence of these petitioners before the Trial Court as accused Nos. l and 2 in the said case since they have not admitted his case against them.

11. Therefore, I am of the considered opinion that the complainant could not proceed against the accused No. 3 only in the absence of petitioners No. l and 2 respectively as accused Nos. 1 and 2 in the said criminal case before the Trial Court. In this view of the matter, I hold that the learned ACMM did not commit any error or irregularity in taking cognizance of the said offence and issuing process against these petitioners alongwith accused No. 3 therein the original drawer of the cheque in question.

For the reasons aforesaid, the present petition is hereby dismissed. However the petitioners (A1 and A2) before the Trial Court may seek their discharge in the said Criminal Case, if they admit the case of the complainant therein, insofar as it relates to their liability to the complainant to pay the sum of Rs. 6,56,091/- and they endorsing the said cheque towards part payment of the said amount as alleged by the complainant in his said complaint. No order as to cost.

