

(2012) 11 OHC CK 0021

In the Orissa High Court

Case No : Criminal Revision No. 467 of 2011

Charanjit Pal Jindal

APPELLANT

Vs

M/s. L.N. Metalics

RESPONDENT

Date of Decision : 09-11-2012

Acts Referred:

Citation : (2013) 2 Crimes 655

Hon'ble Judges : Kumari Sanju Panda, J

Bench : Single Bench

Advocate : Amar Kumar Mohanty, K.A. Guru and S.K. Mohapatra, for the Appellant; M. Agarwal, for the Respondent

Judgement

Kumari Sanju Panda, J.—The petitioner in this revision challenges the order dated 27.5.2011 passed by the learned Sessions Judge, Sambalpur in Criminal Appeal No. 26 of 2010 confirming the order dated 17.4.2010 passed by the learned S.D.J.M., Sambalpur in I.C.C. Case No. 259 of 2008. The facts leading to the present revision are as follows:

Opposite party-company filed a complaint case stating therein that it dealt with production, manufacturing, marketing, and selling of sponge iron and other allied iron ore products. The revision petitioner, who was one of its customer, placed orders through its agent M/s. Jayanti Ispat, Raipur during 21.6.2007 and 24.12.2007 under different invoices and challans. Accordingly, various materials were supplied to the petitioner by the opposite party. The petitioner also made payment in intervals, however, by 24.12.2007 an amount of Rs. 72,22,037/- remained outstanding on the petitioner. As such, a request was made to clear the outstanding amount. On such request, in the month of December, 2007, a sum of Rs. 2,50,000/- was paid. Thereafter, on 27.2.2008 the opposite party sent a written request to the petitioner for clearing the outstanding dues and submitting "C" form as required by the Sales Tax Department. In the first week of March, 2008, the petitioner handed over cheques on different dates, in total amounting to Rs. 60,00,000/-, each of Rs. 5,00,000/- and promised that the entire

outstanding dues will be cleared up before 20.4.2008. Seven cheques bearing numbers 678339 dated 21.3.2008, 678340 dated 24.3.2008, 678341 dated 26.3.2008, 678342 dated 29.3.2008, 678343 dated 3.4.2008, 678344 dated 8.4.2008 and 678345 and 14.4.2008 drawn" on Nariman Point Branch of Central Bank of India. Mumbai amounting to Rs. 35,00,000/- which had been issued by the petitioner in favour of the opposite party were presented with its banker Andhra Bank, Sambalpur on 18.4.2008 for encashment. The bank informed that the cheques could not be honoured due to stop payment on the account as per the instruction of the drawer. As a consequence of the said dishonour of the cheques, the opposite party issued notice u/s 138 of the Act through one of its Directors asking to make payment within 15 days of the notice. The notice was sent by courier service, registered post and under certificate of posting. The notice were duly received by the addressee. As the petitioner made no response or payment, the opposite party filed the complaint case u/s 138 of the Act on 4.6.2008 within the stipulated time. The petitioner after receipt of notice appeared through its Director and denied to have any liability of Rs. 35,00,000/- to the complainant. The opposite party in support of its case examined himself as a witness, he also examined one Ramesh Kumar Agarwal who is one of the Directors of the Company and also produced the cheques, demand notice, postal receipt, postal A.D., etc. which were marked Exts. 1 to 10. However, the petitioner neither examined any witness nor filed any documentary evidence in support of his case. On the above, the Trial Court formulated four issues to be determined the case, which are as follows:

1. Whether the accused issued seven cheques bearing No. 678339, 678340, 678341, 678342, 678343, 678344 & 678345 each of Rs. 5,00,000/- in favour of the complainant to discharge a legal debt/liability?
2. Whether the complainant deposited the cheque within its valid period and whether such cheque was dishonoured only for reason of refer to drawer?
3. Whether the complainant took due step within given time of 30 days to serve the notice on the accused in the required manner and whether after due service of notice on the accused did not respond in a justified manner?
4. Whether the complainant lodged the complaint case within the limitation period, without any delay, or with an explained delay (if any)?

The Trial Court recorded the finding that the cheques were deposited within the stipulated time and demand notices were issued to the accused and defence of the accused was silent regarding all these documents. Accordingly, it was held that the complainant took the required steps for due service of notice on the accused and the complaint petition was filed within the statutory period. Regarding maintainability, complainant discharged initial burden of proving that the cheques were issued for discharge of legal liability and proved its case beyond all reasonable doubt by presenting the cheques before the bank and after receiving information from bank regarding stop payment instruction from the

accused and thereafter, the demand notices were issued. The accused remained silent throughout even after the stop payment of instruction was given by him to the Bank. He had also not taken any step to make payment and taken a stand that the cheques were snatched away from him and had been given to a specific agent for specific purpose. Thus, such defences were merely without any basis. Since one of the Directors of the Company filed the complaint, the complaint petition was maintainable and accordingly, the Trial Court convicted the petitioner u/s 138 of the Act and imposed the sentence to pay compensation of Rs. 50 lakhs to the complainant, in default, S.I. for 15 months. Being aggrieved by the said order, the petitioner filed the appeal before the Sessions Judge, Sambalpur in Criminal Appeal No. 26 of 2010. In the appeal, it was contended by the appellant that the appellant issued cheques in favour of Basanta Kumar Agarwal. Therefore, the complaint filed by the present complainant through Ramesh Kumar Agarwal was not maintainable as Ramesh Kumar Agarwal had not been authorized him to file the complaint on behalf of the company. The Trial Court ignored all the above infirmities. There was also no document to show that the transaction between the complainant and the accused company occurred. As such, the complaint petition is not maintainable as there was no legal enforceable debt or liability. Therefore, the finding of the Trial Court is required to be reversed and the appellant is entitled to acquittal.

2. The opposite party respondent supported the finding of the Trial Court as the cheques were issued in the name of L.N. Metalics, i.e., the complainant-company. The bank intimation slip showed that the accused-company stopped payment of instruction for which the cheques were dishonoured. The notice was issued in the name of the accused company and it received the notice but took no step to refute the allegations made in the notice. On the rival submissions made by the parties, the Appellate Court formulated three points to be determined in the appeal which are as follows:

1. Whether the complaint filed by Ramesh Kumar Agrawal P.W. 1 was maintainable;

2. Whether the cheques were issued in favour of the respondent-Company by the appellant-Company towards discharging legally enforceable debt of Rs. 69,75,037/-;

3. Whether there was valid notice to the appellant-Company.

3. The Appellate Court on analysing the evidence on record held that the complaint case filed by Ramesh Kumar Agarwal was maintainable as while examining himself on behalf of the complainant he categorically stated that he as one of the Directors filed the complaint petition with due authority and nothing had been suggested to him by the accused that he was not competent to file the complaint while cross-examining him. The accused-company admitted that cheques were issued by it. The plea of snatching of cheques is an offence of theft. In the absence of any complaint or allegations regarding snatching of

cheques from the accused-company, the said plea was unbelievable. That apart, the accused company did not file any written defence explaining under what circumstances, the cheques came into the complainant-company and the accused did not examine said Basant Kumar Agarwal to establish that the cheques were given to him and not to the complainant company and the same were snatched away. Thus, in view of Section 139 of the Act presumption was raised that the holder of the cheque received the cheque for discharge of debt, in part or in whole, unless contrary is proved. The person who seeks to rebut the said presumption must establish the circumstances that the alleged debt did not exist. The accused having failed to establish a single circumstance regarding non-existence of debt, it can lawfully be presumed that the cheques were issued towards part payment of the debt. Accordingly, the accused is liable to be convicted and after valid notice to the accused-company, it failed to make payment within the statutory period. The complainant had filed a complaint in accordance with the statutory provision and the same is maintainable. On these finding, he has dismissed the appeal.

4. Learned Counsel appearing for the petitioner submitted that the Court below overlooked the fact that there are no single documents to show that Ramesh Kumar Agarwal was the Director of the complainant company or authorized to be represented the company to file the complaint case and adduce evidence. He further submitted that there being no agreement existed between the parties for alleged business transaction and non-examination of Basant Kumar Agarwal was vitiated the proceeding. As such, the impugned order is liable to be interfered with. In support of his contention, he has cited decisions of the Apex Court in the case of Shubh Shanti Services Ltd. Vs. Manjula S. Agarwalla and Others, and State Bank of Travancore Vs. Kingston Computers (I) P. Ltd.,

5. Learned Counsel for the complainant-opposite party submitted that Section 138 of the Act stipulates that dishonour of a cheque for insufficiency of funds in the bank account is an offence punishable 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. Section 142 of the Act stipulates that no Court shall take cognizance of any offence punishable u/s 138 of the Act unless a written complaint is made by the payee. Thus, it is the payee-alone who can make a complaint for dishonour of a cheque. A company represents by an employee or by a non-employee who is empowered to do so if the cheque is issued in favour of the company. In support of his contention, he has cited a decision of the Bombay High Court in the case of M/s. Credential Financial Ltd. Vs. State of Maharashtra and others, wherein it was held, that existence of authorization not begin a precondition, complaint is maintainable u/s 138 of the Act and a decision of the Gujarat High Court in the case of Geekay Exim (India) Ltd. and Others Vs. State of Gujarat and Another,

6. From the rival submissions of the parties and after going through the L.C.R., it appears that the petitioner accused has not filed any written defence nor it has

examined any witness; rather it had only cross-examined the complainant witness who participated in the hearing of the complaint case. The complainant-company has examined one of its Directors who stated on oath before the Court that he had been authorized to file the complaint which was not disputed by the accused. Since both the Courts below came to the concurrent findings that the complaint case is maintainable, this Court in this revision is not inclined to go in to the evidence and re-assess it by exercising its revisional jurisdiction. Both the Courts below concurrently came to a conclusion that the cheques were issued by the company for payment of debt/towards supply of materials which were dishonoured with the instruction of the payee not to make payment. After receiving the said fact from the bank, the complainant issued notice which was duly served and the accused-company had not taken any step nor had given any reply. Accordingly, both the Courts below rightly held that the petitioner is guilty of section 138 of the Act and imposed the sentence as aforesaid.

7. The Apex Court in the case of M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, has held as follows:

If any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complaint requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. The only eligibility criterion prescribed by Section 142 is that the complaint u/s 138 must be by the payee or the holder in due course of said cheque. This criterion is satisfied as the complaint is in the name and on behalf of the appellant-company who is the payee of the cheque. Merely because complaint is signed and presented by a person, who is neither as authorized agent nor a person empowered under the articles of Association or by any resolution of the Board to do so is no ground to quash the complaint. It is open to the de jure complainant-company to seek permission of the Court for sending any other person to represent the company in the Court. Thus, even presuming, that initially there was no authority, still the Company can, at any stage, rectify that defect. At a subsequent stage the Company can send a person who is competent to represent the company.

In view of the above and the ratio decided by the Apex Court in the case of M/s. M.M.T.C. Ltd. (supra), this Court is not inclined to interfere with the concurrent finding of facts arrived at by both the Courts below in exercising its revisional jurisdiction in this criminal revision.

Accordingly, the criminal revision is dismissed.