(2011) 03 DEL CK 0314

In the Delhi High Court

Case No : Criminal M.C. No. 3239 of 2008 and Criminal M.A. No. 11958 of 2008

Citibank, N.A. APPELLANT

Vs

The State (NCT of Delhi) and Another RESPONDENT

Date of Decision : 21-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 118, 125, 138, 20, 49
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471, 511

Citation : (2011) 2 JCC 1274

Hon'ble Judges : Ajit Bharihoke, J

Bench : Single Bench

Advocate : Sanjeev Singh, for the Appellant; Sunil Sharma, APP For the State and Mr. Gurbaksh Singh, Advocate for the Resp. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Bharihoke, J.—Citibank, N.A. the petitioner herein vide this petition u/s 482 Cr.P.C. is seeking quashing of complaint case CC no. 113/1/06 titled "Partha Chatterjee Vs. Citibank, N.A & Others" as also the summoning order dated 09.07.2007 passed by the Metropolitan Magistrate, New Delhi wherein the petitioner Bank and others have been summoned to undergo trial for the offences punishable u/s 420 read with Section 511 IPC and Sections 467/471 IPC. The petitioner has also sought quashing of the order dated 14.05.2008 of learned Metropolitan Magistrate, New Delhi issuing non-bailable warrants against the Branch Manager, Citibank, N.A., Con-naught Circus, New Delhi.

2. Briefly stated, facts relevant for the disposal of this petition are that the petitioner Citibank filed a complaint u/s 138 Negotiable Instruments Act (for short N.I. Act) alleging that respondent No.2 Partha Chatterjee was given a loan vide Account No.LTB-DMS-4436214. Respondent No.2 issued a cheque No.230874 dated 01.09.2003 drawn On HSBC Bank Ltd., Calcutta for a sum of Rs.25,97,768.2 towards repayment of one of the instalments of loan amount in

respect of his liability. The said cheque was sent for encashment, but it was returned unpaid by the bankers of respondent No.2 vide memo dated 18.09.2003 with the remarks "Account closed". A "demand notice u/s 138 N.I. Act was served upon the respondent No. 2, but he failed to pay the cheque amount within the requisite period of 30 days. This led to filing of the complaint by Citibank.

3. The concerned Metropolitan Magistrate, pursuant to the said complaint and the evidence led by Citibank summoned Partha Chatterjee/respondent No.2 to undergo trial for the offence u/s 138 N.I. Act. After the receipt of said summons, respondent No.2 filed a criminal complaint against Citibank and Others in the court of Additional Chief Metropolitan Magistrate, New Delhi, who assigned the complaint to the Metropolitan Magistrate concerned. In the said complaint, Partha Chatterjee claimed that he had borrowed a sum of Rs.3,00,000/- from Citibank, Calcutta against loan Account No.LTB-DMS-4436214 and as per the statement of account pertaining to aforesaid loan dated 19.04.2005, more than Rs.3,00,000/- was shown as due from respondent No.2. Respondent No.2 also claimed in the complaint that at the time of sanction of said loan, the officials of the petitioner obtained some blank signed cheques, besides blank papers and unfilled forms. Respondent No.2 claims in his complaint that the petitioner, with dishonest intention, has forged one of those blank cheques bearing his signatures being cheque No.230874 dated 01.09.2003 drawn on HSBC Bank Ltd., Calcutta by converting it into a cheque of Rs.25,97,762.2 towards the payment of one of the instalments of loan Account No.LTB-DMS-4436214. It is also alleged in the complaint that aforesaid forgery has been done by the petitioner and others in collusion with each other to obtain wrongful gain.

4. Learned Metropolitan Magistrate, on consideration of the complaint and pre-summoning evidence found prima facie material disclosing the offence punishable u/s 420 read with Section If 511 IPC and sections 468 and 471 IPC against the petitioner and the others and he summoned, them accordingly vide impugned order dated 09.07.2007.

5. The Branch Manager, Citibank, Jeeven Bharti Building, Connaught Circus refused to accept the bailable warrants issued by the court for his appearance. Thus, vide order dated 14.05.2008, learned Metropolitan Magistrate, New Delhi directed issuance of non-bailable warrants against accused No.2 for hearing dated 10.10.2008.

6. Learned counsel for the petitioner submits that the complaint filed by respondent No.2 as well as the impugned summoning order dated 09.07.2007 are liable to be quashed for the reason that the complaint as well as preliminary evidence recorded by the learned Metropolitan Magistrate does not disclose commission of either of the offences punishable u/s 420/511 IPC and Section 468/471 IPC. Elaborating on the argument, learned counsel submitted that admittedly as per the allegations in the complaint, respondent No.2 had given blank signed cheque to the petitioner. Therefore, by virtue of Section 20 of

Negotiable Instruments Act, 1881, the respondent No.2 by giving a blank signed cheque, which is a negotiable instrument, to the petitioner had given him authority to make or complete the cheque by filling in the amount and date etc. Thus, it cannot be said that the petitioner Bank has forged the cheque of Rs.25,97,762.20 dishonestly with a view to cheat respondent No.2 for encashment to the drawee bank. In support of this contention, learned counsel for the petitioner has relied upon the judgment of this Court in Ravi Chopra Vs. State and Another, wherein learned Single Judge of this Court has, inter alia, observed thus:

18. Section 20 NI Act talks of "inchoate stamped instruments" and states that if a person signs and delivers a paper stamped in accordance with the law and "either wholly blank or have written thereon an incomplete negotiable instrument" such person thereby gives prima facie authority to the holder thereof "to make or complete as the case may be upon it, a negotiable instrument for any amount specified therein and not exceeding the amount covered by the stamp." Section 49 permits the holder of a negotiable instrument endorsed in blank to fill up the said instrument "by writing upon the endorsement, a direction to pay any other person as endorsee and to complete the endorsement into a blank cheque, it makes it clear that by doing that the holder does not thereby incurred the responsibility of an endorser." Likewise Section 86 states that where the holder acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent has not been obtained to such acceptance would stand discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance. Section 125 NI Act permits the holder of an uncrossed cheque to cross it and that would not render the cheque invalid for the purposes of presentation for payment. These provisions indicate that under the scheme of the NI Act an incomplete cheque which is subsequently filled up as to the name, date and amount is not rendered void only because it was so done after the cheque was signed and delivered to the holder in due course.

19. The above provisions have to be read together with Section 118 NI Act which sets out various presumptions as to negotiable instruments. The presumption is of consideration, as to date, as to time of acceptance, as to transfer, as to endorsement, as to stamp. The only exception to this is provided in proviso to Section 118 which reads as under:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

20. A collective reading of the above provisions shows that even under the

scheme of the NI Act it is possible for the drawer of a cheque to give a blank cheque signed by him to the payee and consent either impliedly or expressly to the said cheque being filled up at a subsequent point in time and presented for payment by the drawee. There is no provision in the NI Act which either defines the difference in the handwriting or the ink pertaining to the material particulars filled up in comparison with the signature thereon as constituting a material alteration for the purposes of Section 87 NI Act. What however is essential is that the cheque must have been signed by the drawer. If the signature is altered or does not tally with the normal signature of the maker, that would be a material alteration. Therefore as long as the cheque has been signed by the drawer, the fact that the ink in which the name and figures are written or the date is filled up is different from the ink of the signature is not a material alteration for the purposes of Section 87 NI Act.

7. It is not disputed that Section 20 of N.I. Act talks of inchoate stamped instruments and states that if a person signs and delivers a paper stamped in accordance with law either wholly blank or written thereon an incomplete instrument, such person thereby gives, prima facie, authority to the holder of such document to make or complete, as the case may be, upon it a negotiable instrument for the amount specified thereon and not exceeding the amount covered by the stamp. This authority, however, cannot be unrestricted and the extent of authority, to my mind, is to be judged from the background facts of the case. In the instant case, the petitioner filed a complaint u/s 138 N.I. Act on account of dishonour of cheque No.230874 dated 01.09.2003 drawn on HSBC Bank Ltd., Calcutta for a sum of Rs.25,97,768.20 towards repayment of one of the instalments of the loan account in respect of part liability with following allegations :

4. That the accused above named was given loan vide loan Account NO.LTBDMS4436214.

5. That the accused above named issued a cheque No.230874 dated 01/09/2003 drawn on HSBC Bank Ltd, Calcutta for a sum of Rs.25,97,768.2 towards the repayment of one of the instalments of the loan amount in respect of part payment of his liability.,

6. That the said cheque was sent for encashment and the same was returned unpaid by the bankers of the accused vide Memo dated 18.09.2003 with the remarks ACCOUNT CLOSED to the banking branch of the complainant. The complainant received the information only on 20.09.2003.

7. That the collection-cum-legal unit of the complainant at Delhi called upon the accused to make the payment of the aforesaid cheque, but all in vain. Thereafter, the complainant sent a legal/demand Notice to the accused from Delhi by Registered Post on 08/10/2003 within 30 days of receiving the information regarding dishonouring of the cheque, requiring him/her (accused) to pay the amount covered by the said cheque within fifteen days from the receipt of the

Notice. Neither A.D. nor undelivered letter has been received back till date.

8. Conjoint reading of aforesaid allegations gives rise to an inference that the cheque in question was issued against the discharge of liability pertaining to loan Account No.LTB-DMS-4436214 in the name of respondent No.2. This is also evident from the copy of notice of demand u/s 138 N.I. Act issued by the petitioner''s counsel to respondent No.2, which also gives an impression that the cheque in question was issued towards the discharge of liability in the loan Account No.LTB-DMS-4436214. The disputed cheque of Rs.25,97,768.20 is dated 01.09.2003. This means that the cheque in question was issued for the discharge of the loan liability upto 01.09.2003. Petitioner has placed on record copy of the statement of loan Account No.LTB-DMS-4436214 as on 31.03.2005. On perusal of this statement of account, it transpires that as on 31.03.2005, the amount due from Respondent No.2 against the said amount was to the tune of Rs.3,67,584.41. Therefore, by no stretch of imagination, it can be said that a sum of Rs.25,97,768.20 was due from respondent No.2 against said loan-account, as on 01.09.2003. That being the situation, by filling in a huge amount of Rs.25,97,738.20 against a loan of around Rs. 3 lakhs in the blank cheque, which was given in the said loan account the petitioner prima facie has committed a forgery with the intention to cheat respondent No.2. Thus, the summoning order dated 09.07.2007 of learned Metropolitan Magistrate cannot be faulted.

9. Next submission of learned counsel for the petitioner is that the summoning order is liable to be set aside for the reason that it is a non-speaking order. I have gone through the copy of the impugned order on record and on perusal, it transpires that the learned M.M. has not only detailed the brief facts of the complaint, but he has referred to they preliminary evidence before arriving at a conclusion that a prima facie case u/s 420 read with Section 511 IPC and Section 467 and 471 IPC is disclosed. Thus, there is no merit in above submission.

10. It is further contended on behalf of the petitioner that actually the cheque in question for Rs.25,97,768.20 was given by respondent No.2 in part discharge of his liability in respect of the compromise/settlement arrived at between the petitioner Bank and respondent No.2 on 14.09/2002. However, due to inadvertence, in para 3 of the complaint u/s 138 N.I. Act, the reference to loan Account No. LTD-DMS-4436214 has been wrongly made instead of the above referred settlement. In support of this contention, learned counsel for the petitioner has referred to the copy of the purported settlement arrived at between the parties on 14.09.2002 which is placed on record as Annexure C, according to which respondent no.2 had undertaken to clear the dues pertaining to 15 loan accounts of various persons amounting to Rs. 32,79,076.87 in instalments from 21.09.2002 till 15.12.2002. Learned counsel argued that otherwise also, the blank cheques given by respondent No.2 against loan Account No.LTB-DMS-4436214 pertain to a different series of cheques, whereas the cheque in question relates to a subsequent series. Thus, according to learned

counsel for the petitioner, there was no dishonest intention on the part of the petitioner Bank. As such, prima facie, commission of offences u/s 420/511 IPC and Section 467/471 IPC is not disclosed.

11. The above explanation given on behalf of the petitioner is in the nature of defence. Neither in the complaint u/s 138 N.I. Act filed against respondent No.2 nor in the notice of demand u/s 138 N.I. Act sent by the petitioner to respondent No.2, is there any reference of the above referred settlement dated 14.09.2002 between the petitioner and respondent No.2 whereby respondent No.2 had agreed to clear the loan accounts of 15 different debtors and undertaken to pay aforesaid amount totalling Rs.32,79,076.87 to the petitioner in instalments from September 2002 to 15th December, 2002.

12. In the background of aforesaid factual matrix, whether or not the cheque in question relates to the loan transaction of Rs. 3 lakhs against loan Account No.LTD-DMS-4436214 or it relates to the alleged settlement arrived at between petitioner and respondent No.2 on 14.09.2002 is an intricate question of facts, which cannot be determined unless evidence is led in trial. Therefore, interference of this Court in the proceedings of the complaint u/s 482 Cr.P.C. at this nascent stage is not called for. Accordingly, this Court does not find any ground to interfere in exercise of its powers u/s 482 Cr.P.C.

13. Petition is dismissed.

