

(2008) 06 BOM CK 0033

In the Bombay High Court

Case No : Criminal Writ Petition No. 677 of 2007

Dinesh Wasudeo Wanjari

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 30-06-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 203, 397, 401
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2008) 5 BomCR 898

Hon'ble Judges : Joshi A.H., J

Bench : Single Bench

Advocate : A. Shelat, for the Appellant; T.D. Khade, Assistant Public Prosecutor for respondent 1 and Ambarish Joshi, for the Respondent

Judgement

Joshi A.H., J.—Rule. Rule is made returnable forthwith. Heard learned Advocate Mr. A. Shelat for the petitioner and learned Advocate Mr. Ambarish Joshi for respondent Nos. 2 and 3. Service on respondent No. 4 is not necessary in view that no effective steps have been taken to serve him.

2. Petitioner had filed a complaint u/s 138 of the Negotiable Instruments Act.

3. Trial Court has ordered issue of process by order dated 28th August, 2006. This order of issue of process was challenged by accused by filing a Revision Application u/s 397 of Criminal Procedure Code in Sessions Court.

4. Learned Sessions Court allowed the Revision Application and dismissed the complaint by quashing the order of issue of process.

5. On perusal of the judgment, it reveals that the learned Judge found that it was not a case of issue of cheque for a debt, in as much that it was a cheque issued by company under the signatures of its Chairman and Directors, in the name of the same Company, i.e., for all purposes, it was a cheque in own name.

6. This judgment is challenged by filing the present writ petition.

7. Learned Advocate for the petitioner urged that it was wholly unnecessary on the part of the Revisional Court to have gone into the facts and merits of the case, further that the Revision would not lie in the light of observations contained in two reported judgments in cases of [1] Adalat Prasad Vs. Rooplal Jindal and Others, , and [2] Subramaniam Sethuraman Vs. State of Maharashtra and Another, .

8. Learned Advocate then tried to distinguish his case from the reported judgment of this Court in case of V.K. Jain and Others Vs. Pratap V. Padode and Another, . Relying on reported Judgment of Hon''ble Supreme Court in case of Kusum Rewatkar Vs. Krishnaji Rewatkar, , learned Advocate further argued that whether a case could be filed without arraying the Company as a party is a matter of reference to larger Bench, and in the light of this situation, he has made out a case for entertaining present writ petition, grant of relief by way of setting aside impugned order and restoring the case for hearing and disposal according to law.

9. In order to test the submissions, this Court has perused the record with the petition and reply.

10. As far as the tenor and description of the cheque, subject-matter, is concerned, it has been narrated in paragraph No. 5 of the Judgment of the Revisional Court. Factual correctness of this paragraph is not in dispute. It shall be better to refer by quotation para 5 of the said Judgment which reads as follows:

5. it will be clear from the impugned cheque which is document No. 4 in this case that the cheque No. 985807 for Rs. 1,00,00,000/- dated 24-12-2005 was issued by the Chair-man-cum-Managing Director of Gas Suvidha Petrochemical Ltd., to M/s. Gas Suvidha Petrochemical Ltd. It was an account payee cheque. The accused Nos. 2 and 3 said to have signed on this cheque.

[quoted from page Nos. 22 and 23 of the writ petition paper-book].

11. It is then seen that on question of law, the learned Sessions Judge has dealt with in para 8 about the question of locus standi of the complainant to file complaint against other Directors of a Company when the complainant claims that he was still a Director of same Company. The discussion in this regard as is seen in paragraph 8 reads as follows:

8. It is further to be noted that there is no even averment in the complaint to point out that the complainant was authorised to file complaint. The cheque was issued in the name of the company. When the complainant himself branded as one of the Director of the said Company, he could also be prima facie held liable to be arrayed as accused along with accused No. 2 and 3. In what capacity the complainant could file complaint regarding the cheque which was account payee and was drawn in the name of said company of which complainant besides accused No. 2 and 3 being directors could file complaint is neither made clear nor

understandable....

[quoted from page 24 of the writ petition paper-book]

12. Coming to the question of maintainability of Revision Application, this Court finds that in the judgments in cases of Adalat Prasad v. Rooplal Jindal and Ors. [supra] and Subramaniam Sethuraman v. State of Maharashtra and Anr. [supra], the question before Hon''ble Supreme Court about correctness of law laid down in case of KM. Mathew was relating to jurisdiction of the Magistrate to recall the process.

13. What is laid down in case of Adalat Prasad has been reiterated in case of Subramaniam Sethuraman, where attempt was made to persuade Hon''ble Supreme Court that the procedure in a warrant case would be different, which contention has been declined.

14. In case of V.K. Jain and Ors. v. Pratap V. Padode and Anr. [supra], at paragraph 27, this Court has in categorical terms held that a Revision Application would lie against an order of issue of process in the background of cases of Adalat Prasad and Subramaniam Sethuraman. Learned Advocate Mr. Shelat submits that, while deciding V.K. Jain's case, contents of para 16 of the judgment of Hon''ble Supreme Court in case of Adalat Prasad are not properly considered by this Court. For ready reference, Para 16 of case of Adlat Prasad is quoted below:

16. It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code, because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal Courts, the remedy lies in invoking Section 482 of Code.

Apart from para 16, it is not shown that any other discussion or finding, rendered in Adalat Prasad's case is not considered.

15. It is seen from paras 10 and 16 of V.K. Jain's case that this Court has given due consideration and has dealt with the dictum given in cases of Adalat Prasad as well as Subramaniam.

16. It is as vivid as illuminated in day light that the question before the Hon''ble Supreme Court was whether Mathew's case laid down a correct law. The question was not as to whether in order to challenge an order of issue of process, Revision Application u/s 397 or 401 of Criminal Procedure Code would be barred in contrast with jurisdiction of this Court u/s 482 of Criminal Procedure Code.

17. Learned Advocate for the petitioner wants this Court to read between the

lines and infer from para 16 of the judgment in case of Adalat Prasad and hold that the order of issue of process is a holy cow and beyond reach, except u/s 482 of Criminal Procedure Code.

18. In case the submission of learned Advocate Mr. Shelat is accepted, its essential fallout is to render the jurisdiction under Sections 397 and 401 of Criminal Procedure Code unavailable. This submission would create a barrier on the revisional jurisdiction which is not spelt out from the language of these sections or any precedent.

The submission that case of V.K. Jain does not lay down law correctly is without any foundation, and is rejected.

19. In so far as the judgment in case of Aneeta Hada v. Godfather Travels & Tours Pvt. Ltd., is concerned, this Court has noted from impugned judgment that Revisional Court has not dismissed the complaint on the ground that the company was not made a party," though it was a case of dishonor of cheque issued by and on behalf of company.

20. The emphasis given by Sessions Court, while dismissing the complaint is on the fact that cheque was issued by the Company through Chairman with Director in the name of the very Company, and has been dishonoured, and this dishonour is being used by another Director of the same Company.

21. Thus, the facts leading to dismissal of complaint are drastically different. The question of law involved in case of Aneeta Hada v. Godfather Travels & Tours Pvt. Ltd. is not even remotely involved in the case.

22. By way of last limb of submission, learned Advocate Mr. Shelat has argued that while holding that the complaint is not maintainable, and on going into factual details, the learned Sessions Judge has actually stepped into enquiry of facts and merits of the case.

Upon testing this submission, it is seen that the discussion, which has led to dismissal of case pertains to the conclusions which ex facie emerge from the tenor of cheque, and when on what prima facie appears from the contents of complaint and documents produced and if it reveals that allegations do not conform to the bare description of offence, this type of scrutiny does not amount to adjudication of facts. This submission is raised without any factual foundation for the ground urged.

23. In these premises, the petitioner has failed to make out any case to show that the judgment of Revisional Court was erroneous and rendered without jurisdiction.

24. Revisional Court was, thus, within its bounds and has not pre-judged the facts before trial, as alleged. The Revisional Court has ruled on the facts which were ex facie emerging and no formal proof of fact of tenor of cheque was required, as the said document was relied upon by complainant himself.

25. It is seen that the Court issuing process has noted one after other dates material for Section 138 of the Negotiable Instruments Act, and has only reckoned the days of limitation.

26. The Magistrate has not touched the aspect which could have occurred to the mind of the Judge by bare perusal of the cheque that it was drawn by the Company in its own name, was a crossed and Account Payee cheque.

27. The order of issue of process, on the other hand, reveals to be a product of total non-application of mind.

28. The Magistrate could have noted that bare perusal of cheque does not, in any manner, suggest that it was issued in favour of the complainant. On this ground alone as well, complaint was liable to be dismissed.

29. In the premises discussed in the foregoing paragraphs, it would be uncharitable to urge, much less to hold, that the Revisional Court has either overstepped or gone into appreciation of evidence and pre-judged the issue before trial.

30. This Court is satisfied that the Revisional Court has arrived at conclusions which optionlessly fell from the facts on record and the Revision Application has been rightly allowed.

In the circumstances, writ petition does not merit interference, and Rule is discharged.