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(2001) 12 DEL CK 0100

In the Delhi High Court

Case No : Criminal M. (M) 1014 of 2001

D.R. Gupta APPELLANT

Vs

State and Another RESPONDENT

Date of Decision : 04-12-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141
Penal Code, 1860 (IPC) — Section 420

Citation : (2002) 95 DLT 543 : (2002) 61 DRJ 334

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : Suman Kapoor, for the Appellant; S.K. Khurana, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Gupta, J.—In this petition u/s 482 Cr.P.C. the petitioner seeks setting aside of summoning order dated 29th January 2000 and quashing of complaint case No. 174/1/99 - S.K. Khurana v. Singhal Holdings Pvt. Ltd and Ors. pending before a Metropolitan Magistrate.

2. Said complaint (No. 174/1/99) u/s 138 read with Section141 the of Negotiable Instruments Act, 1881 (for short the ''Act'') and Section 420 IPC was filed by S.K. Khurana, respondent No. 2 herein alleging that Singhal Holdings Pvt. Ltd, accused No. 1 is a company incorporated and registered under the Companies Act, 1956. R.P. Gupta, accused No. 2 and D.R. Gupta, accused No. 3/petitioner are the directors of accused No. 1 and are responsible for the day to day running of company. Accused No. 1 company invited applications for allotment of residential flats to be constructed at Village Bijwasan. Complainant applied for allotment of a two bed room flat having a covered area of 900 sq. yds. and he was allotted Flat No. B-203 on the first floor at a cost of Rs. 150/- per sq. ft. It is further alleged that complainant paid Rs. 1 lac through cheque No. 410558 dated 5th March 1988. Amounts of Rs. 10,200/- on 19th October 1990, Rs. 20,000/-

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on 22nd October 1990, Rs. 12,750/- on 6th March 1990 and Rs. 10,000/- on 19th September 1994 were further paid by complainant against receipts issued by accused No. 2. After the complainant failed to receive possession of flat despite repeated requests, he sent a letter dated 4th June 1998 requiring the accused to deliver possession of flat to him. In response to this letter the accused No. 3 sent reply dated 17th July 1998 alleging that no money had been deposited in the Company''s account by the complainant. Stand taken in the reply is totally false. It is also alleged that cheque bearing No. 230018 dated 15th January 1999 for Rs. 60,000/- was thereafter issued by the accused towards part refund of money received from the complainant. On presentation this cheque was received back unpaid with the remark - ''Account closed on 27th May 1998''. Complainant thereafter sent a notice through counsel as required by Section 138 of the Act on 1st February 1999 to the accused who despite service thereof, failed to make payment of the amount of said cheque. It was prayed that accused be prosecuted and punished for the offences u/s 138 of the Act and Section 420 IPC.

3. In terms of order dated 29th January 2000 the petitioner-accused No. 3 who is yet to appear before trial court, was summoned to face trial for the offence under said Section 138.

4. Submission advanced by Sh. Suman Kapoor for petitioner was that cheque for Rs. 60,000/- was issued by accused No. 2 in his individual capacity from his bank account; Singhal Holding Pvt. Ltd./accused No. 1 had not received any money from respondent No. 2/complainant. Therefore, the trial court was not at all justified in summoning the petitioner in terms of the impugned order. In support of submission, he invited my attention to the receipts dated 19th October 1990 for Rs. 10,200/-, dated 22nd October 1990 for Rs. 20,000, dated 6th March 1990 for Rs. 12,750/-, dated 19th September 1994 for Rs. 10,000/- cheque in question placed on the file of trial court, copies of the letter dated 25th June 1998 sent by respondent No. 2 as also reply dated 17th July 1998 sent on behalf of accused No. 1 company to respondent No. 2 has filed Along with the present petition. On the other hand, contention of respondent No. 2-complainant was that he is not concerned about internal arrangement between the accused regarding adjustment of the amount received from him. Admittedly, accused No. 2 has not been arrayed as a respondent in this petition. Respondent No. 2 filed on record receipt dated 5th March 1988 which was issued in token of receipt of aforesaid cheque No. 410558 for Rs. 1 lac towards part payment of flat No. B-203 to be allotted as also allotment letter dated 5th March 1988 pertaining to this flat. Both the receipt and allotment letter are signed by accused No. 2 as director of accused No. 1 company and on the top of them name of accused No. 1 company is printed in bold letters. Aforesaid receipts dated 19th October 1990, 22nd October 1990, 6th March 1990 and 19th September 1994 would reveal that the amounts noted therein were received towards part payment of said flat. Said receipt dated 19th October 1990 notices that amount mentioned therein was received by accused No. 2 for purchasing stamp papers for registration of the flat

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in the name of respondent No. 2. Obviously, cheque in question though issued by accused No. 2 from his account, was towards refund of the amount received on account of said flat No. B-203 to be allotted to respondent No. 2. In my view, on these facts the question of discharge from criminal liability arising out of dishonour of cheque in question can be gone into only during trial and not in these proceedings u/s 482 Cr.P.C. and the petition, Therefore, deserves to be dismissed.

5. resultantly the petition is dismissed.

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