
(1991) 02 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition No. 13735-M of 1990

Ess Bee Food Specialities and Others

APPELLANT

Vs

Kapoor Brothers

RESPONDENT

Date of Decision : 19-02-1991

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142

Citation : (1992) CriLJ 739 : (1992) 3 RCR(Criminal) 1

Hon'ble Judges : G.S. Chahal, J

Bench : Single Bench

Advocate : Hemant Kumar, for the Appellant; M.L. Sarin and Jaishree Thakur, for the Respondent

Judgement

G.S. Chahal, J.—This criminal miscellaneous petition u/s 482 of the Code of Criminal Procedure, 1973, has been brought by Ess Bee Food Specialities, village Saidpura (near Dera Bassi), District Patiala, petitioner No. 1 through its managing partner, Baljinder Singh, petitioner No. 2 and partner, Jagal Singh, petitioner No. 3 for quashing of the complaint dated December 22, 1989, annexure P-1 u/s 138 of the Negotiable Instruments Act, 1881 (for short "the Act"), and Section 406/ 420 of the Indian Penal Code, the subsequent proceedings and the impugned orders, annexures P-2 and P-3.

2. The impugned complaint was brought by Kapoor Brothers Roller Flour Mills, Panchkula ("respondent-firm" herein), u/s 138 of the Act, read with Section 406/420 of the Indian Penal Code, The respondent-firm pleaded therein that it was a registered partnership firm carrying on the business of running a flour mill. It supplies flour mill products. In December, 1988, petitioner No. 2 approached the respondent-firm for the supply of maida on regular basis on credit and this offer was accepted. It was agreed that the payment shall be made within ten days of the date of supply of the maida, as per the bill. Interest at the rate of 23 per cent, per annum was to be charged if the payment was not made within the stipulated period of ten days. The supplies were then made. The transactions

were entered in the daily sales register and the ledger book maintained. A running account was opened and payments were made, though irregularly. As per the account books, a balance of Rs. 1,24,640 stood due to the respondent-firm from the petitioner-firm. Some of the cheques issued were dishonoured and ultimately a registered notice was issued on October 24, 1989, but, in spite of the same, and the information being delivered of dishonouring of the cheques, the payment was not made. A meeting was then arranged. Baljinder Singh, petitioner No. 2, issued two cheques, one dated November 2, 1989, for Rs. 15,900 and the second dated November 9, 1989, for Rs. 11,000 as part payment. These cheques were drawn on the Punjab National Bank, Sector 17B, Chandigarh, with the assurance that the same would be encashed on presentation to the bank. These cheques were then presented, but were received back with the endorsement "refer to drawer". After receiving the information of the dishonouring of the cheques, a legal notice dated November 25, 1989, was issued. Two of the notices were received back undelivered while one was delivered to Baljinder Singh, petitioner No. 2. In spite of this service of notice, the payment in question was not made and, as such, the offence u/s 138 of the Act, was committed. From the very beginning, the intention of the petitioners was dishonest and, as such, offences u/s 406/ 420 of the Indian Penal Code had also been committed.

3. The learned Magistrate issued process u/s 138 of the Act. A revision was then preferred to the Court of Session which was heard by the Additional Sessions Judge, Ambala, who, vide order dated July 14, 1990, dismissed the same.

4. The petitioner-firm challenges the orders of the Magistrate and of the Additional Sessions Judge on the ground that the court at Ambala had no territorial jurisdiction to try the case since the cheques were issued and dishonoured at Chandigarh. The petitioners are carrying on their business at Chandigarh. If any offence was committed, it was within the jurisdiction of the Chandigarh court. Statutory notice u/s 138 of the Act had also not been served and as such no complaint was maintainable and the criminal proceedings had been brought with the intention of harassment and humiliation of the petitioner-firm.

5. To appreciate the arguments of learned counsel, the following provisions of the Act may be quoted :

"30. Liability of drawer.--The drawer of a bill of exchange or cheque is bound in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

138. Dishonour of cheques for insufficiency, etc., of funds in the account.--Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by

the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both :

Provided that nothing contained in this section shall apply unless--

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier ;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid ; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.--For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

142. Cognizance of offences.--Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) no court shall take cognizance of any offence punishable u/s 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque ;

(b) such complaint is made within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable u/s 138."

6. Section 30 deals with civil liability in case of dishonouring of a cheque and the same provides that the drawer had to compensate the holder of the cheque. The Legislature has by means of the Banking Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, inserted Sections 138 and 142, to make out the dishonouring of a cheque to be an offence if the same is dishonoured for want of funds and after service of notice, the amount is not paid within the period prescribed. The offence that is deemed to have been committed under the provisions of Section 138 shall be a complete offence only if the three conditions specified in the provisos to the section also exist. The dishonouring of the cheque must be for the cause that the amount of money standing to the

credit of the drawer is not sufficient to honour the cheque or that it exceeds the financial arrangement made with the bank. In the complaint, the respondent-firm has given all the facts on the basis of which it claims the commission of the offence u/s 138. The term "refer to drawer" is a courteous way adopted by a bank to show its inability to honour the cheque for want of funds. The petitioner-firm has not been able to show that the term "refer to drawer" in the present case conveyed a different meaning. Section 142(b) provides the clincher. The cause of action will be complete only when the drawer fails to make the payment of the amount of the cheque within 15 days of the receipt of notice, provided by the proviso (b) to Section 138. The offence will, thus, be complete only when the period of notice expires and the payment is not made. For my above observations. I derive support from the following observations made by their Lordships in *Paramjith Singh Vs. N.C. Job*, :

"When the main body of the section is read along with the proviso, it is clear that the offence will be deemed to have been committed only if the drawer of the cheque failed to make payment within fifteen days of receipt of the notice. An "offence" as defined in Section 2(n) of the Code includes not only the doing of a positive act but by omitting to do something as well. Here the relevant provision says that the offence is the omission to make payment within fifteen days of receipt of notice. Drawing the cheque is not the act by which the offence is deemed to have been committed.

When the drawer fails to make the payment within the period specified in Clause (c) of the proviso, the offence is complete. This aspect is made further clear in Section 142(b) of the Act. Under the said clause no court shall take cognizance of any offence punishable u/s 138 unless, "such complaint is made within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138". Normally a cause of action does not arise until the commission of the offence. When Section 142(b) says that the cause of action is the one which arises under Clause (c) of the proviso, such cause of action is the omission to make payment within fifteen days of the receipt of the notice."

Thus, there is no force in the contention of learned counsel that no offence u/s 138 of the Act had been committed.

7. Coming to the question of jurisdiction, it is to be considered that the issuance of the cheques and their dishonouring are only a part of the cause of action and that the offence was complete only when the petitioners failed to discharge their liability to the respondent-firm. For discharging a debt, it is the debtor who has to find out his creditor and since in the present case, the respondent, who is the creditor, has its office at Panchkula, the court at Ambala had territorial jurisdiction to try the offence complained of.

8. There is force in the contention of learned counsel that so far as Jagpal Singh petitioner is concerned, the allegations made in the complaint do not make out a case against him. Section 141 of the Act provides as follows :

"141. Offences by companies.--(1) If the person committing an offence u/s 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purposes of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals ; and

(b) "director" in relation to a firm, means a partner in the firm."

9. Petitioner No. 1 is the firm and petitioners Nos. 2 and 3 are its partners. It was Baljinder Singh who, acting as the managing partner, issued the cheques. A similar provision is contained in Section 278B of the Income Tax Act and in the two judgments referred to as *Puran Devi v. Z.S. Klar*, ITO [1988] 169 ITR 608 and *BASAL TOOL CO. AND OTHERS Vs. Income Tax OFFICER, DISTRICT-II(I), PATIALA*, , it has been interpreted that only the person who is in charge of the affairs or was responsible to the company for the conduct of the business of that company and the company are liable for the offence. Seeking guidance from the above-quoted authorities, I hold that to make Jagpal Singh, the petitioner, liable, the respondent-firm had to allege that he was in charge of the affairs of the company or liable to the company. No such averment has been made and for that reason, no offence is alleged to have been committed by him.

10. I hereby allow the criminal miscellaneous qua Jagpal Singh, petitioner, only and quash the impugned complaint and all the subsequent proceedings against him. The criminal miscellaneous qua the petitioner-firm and Baljinder Singh, petitioner No. 2, is hereby dismissed.