(1997) 07 GUJ CK 0022

In the Gujarat High Court

Case No : Miscellaneous Criminal Application No''s. 2218 and 2223 of 1997

Geekay Exim (India) Ltd. and Others — APPELLANT

Vs

State of Gujarat and Another — RESPONDENT

Date of Decision : 03-07-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1998) 2 ALD(Cri) 297 : (1998) 2 CivCC 434 : (1998) 94 CompCas 516 : (1998) CriLJ 700 : (1997) 3 GLR 2660 : (1998) 3 RCR(Criminal) 37

Hon'ble Judges : R.R. Jain, J

Bench : Single Bench

Judgement

R.R. Jain, J.—Both these matters are between the same parties involving identical question of law and fact, therefore, are decided by this common judgment. The petitioners are the original accused in the complaint filed by respondent No. 2 u/s 138 of the Negotiable Instruments Act, 1881 ("the Act", for short). The learned magistrate taking cognizance of the matter issued summons against the petitioners. Aggrieved by initiation of criminal proceedings and cognizance taken by the court, the petitioners have filed these petitions u/s 482 of the Code of Criminal Procedure ("the Crl. P.C." for brief), for quashing the proceedings and summons in exercise of inherent powers so as to meet the ends of justice and prevent abuse of the process of the court.

2. The facts giving rise to these cases are briefly adverted to as hereunder :

Respondent No. 2, Baccarose Perfumes and Beauty Products Ltd., is a company incorporated under the Companies Act, 1956 (the "Companies Act" for brief), having its registered office at Mumbai and manufacturing unit at Gandhidham. The said company is engaged in the activities relating to manufacture of perfumes and other beauty products. Petitioner No. 1 is also a company incorporated under the provisions of the Companies Act whereas petitioners Nos. 2 to 11 are directors and officers of petitioner No. 1-company. Petitioner No. 1, original accused, gave a cheque bearing No. 706175, dated August 20, 1996, drawn on State Bank of Hyderabad, Fort Branch, Mumbai, for Rs. 1,12,00,000 to respondent No. 2 in discharge of debt and liability. As alleged, the said cheque was returned dishonoured and unpaid with the endorsement "not arranged for and joint signature required", vide bank memo dated December 14, 1996. It is in this background that respondent No. 2-complainant filed Criminal Complaint No. 299 of 1997, in the Court of the judicial Magistrate, First Class at Gandhidham, u/s 138 of the Act. Miscellaneous Criminal Application No. 2223 of 1997 has been filed for quashing of the said proceeding. Similarly, in the case of Misc. Criminal Application No. 2218 of 1997, the petitioners gave cheque No. 706196, dated September 16, 1996, drawn on State Bank of Hyderabad, Fort Branch, Mumbai, for Rs. 67,20,000. The same was also dishonoured with the endorsement "not arranged for and account operated jointly". Therefore, respondent No. 2 filed Criminal Case No. 2052 of 1996.

3. Both these complaints have been filed in the name of respondent No. 2, a company incorporated under the Companies Act. The said complaints have been filed through and are signed by the administrative manager, Mr. Laxman Naraindas Malkani.

4. Mr. Unwala, the learned advocate, for the petitioners, has assailed the maintainability of the complaints mainly on the following grounds :

(i) that notice required u/s 138 of the Act were not served upon petitioners Nos. 2 to 11 prior to institution of the complaints; and

(ii) that the person filing the complaints is Laxman Narain Malkani who is neither payee nor holder in due course, therefore, he has no right to file the complaints. In the alternative, it is also stated that assuming that the complaints are filed on behalf of the payee, then also the signatory has no express authority to file the complaints.

5. To repell these contentions respondent No. 2 has filed an affidavit-in-reply and has also produced several documents. On a perusal of the documents produced with the affidavit-in-reply, it is evidently clear that notices required u/s 138 of the Act were issued and served upon petitioners Nos. 2 to 11, namely, the accused and the directors of petitioner No. 1-company. In the absence of express challenge to the documents, respondent No. 2 shall be deemed to have served notices in accordance with law. Consequently, the first ground of challenge does not survive at all.

6. At the outset, I may state that subject to the merits of the contentions discussed hereinunder, a prima facie case is made out against the respondents as the cheques in question have been dishonoured with the endorsement "not arranged for" meaning thereby "insufficient funds" This amply reflects upon the dishonest intention to bring the case within the ambit of section 138 as held by the Supreme Court in Electronics Trade and Technology Development Corporation. Ltd. v. Indian. Technologists and Engineers (Electronics) Pvt. Ltd.

[1996] 86 Comp Cas 30: [1996] JT 1 SC 643.

7. Therefore, the only question that arises for consideration in both these matters is whether, in the case of a juristic person, a legal entity, special authorisation is required even if legal proceedings are initiated by principal officers in charge of management or by such persons who under law are recognised to represent such a body. Section 141 of the Act defines "company" and the Explanation runs as under :

"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".

8. It is needless to say that a company is a juristic person, a legal entity. A company though a legal entity does not have soul, mind, body and limbs to walk to the court for preferring a complaint. The dicates of common sense, practical wisdom, prudence and experience impel the courts in such a situation to allow a company to be represented by some person concerned with the affairs of the company. Similarly, in the case of a firm also, though strictly not a legal entity for all purposes, but a legal entity for the purpose of this Act, has to act through some human agency connected with the affairs of the firm. In the normal course, such legal entities are managed by a manager, partner, managing partner, director, managing director or principal officers like other executives in charge of affairs and administration. In my view, when the law expressly recognises the right of such persons and executives to represent the interests of a legal entity, like a corporate body, company, firm, etc., no special and express authorisation is required for initiating any legal proceedings like the one criminal complaint under this Act.

9. Since a legal entity or a juristic person has no life and soul it cannot physically discharge managerial functions. In some cases it can also discharge functions through an authorised person. If functions are discharged by a person whose rights are not recognised under law as observed above, namely, manager, partner, director, managing director or any of the principal officers and executives, then such functions can also be discharged through another person under special authorisation.

10. In the instant case also, respondent No. 2-complainant is a legal entity, a juristic person, a company incorporated under the Companies Act and the complaints have been filed in the name of said legal entity, of course as discussed above, it is represented by human agency, namely, administrative manager, and has signed the complaint. A manager, administrative manager, or any officers or executives are also persons under the law to represent institutions and such incorporated bodies. Therefore, in my view, no authority is required specially keeping in mind the Explanation to section 141 of the Act. The question

of authorisation could have arisen if the complaint is filed in a person''s name for and on behalf of the company.

11. An identical question arose for consideration before the Madras High Court in the case of Sagayadurai v. J. D. Electronics [1997] 2 Cri 115, wherein the court held that, in that case of a firm, the manager is authorised to sign documents, agreements, therefore, the complaint filed by the manager on behalf of the firm is legal and valid and it cannot be stated that the manager representing the company shall obtain a special permission or authorisation from the company and file it along with the complaint. While dealing with the scope of section 138 of the Act and competency of a person to file a complaint, it is held by the Madras High Court in Sudesh Kumar Sharma v. K. S. Selvamani 4 [1994] CCR 2374: [1995] 84 Comp Cas 806 that a complainant must necessarily be a payee or holder in due course and if the complaint is filed by the manager in his personal capacity then an authorisation is required. In that case, the complaint was not filed in the name of the legal entity but in the name of the manager representing the interests of legal entity. Since the manager who filed the complaint was not the payee or holder in due course, the court held that an authorisation is necessary. In the case of Ruby Leather Exports v. K. Venu [1993] MWN 249: [1995] 82 Comp Cas 776, it has been held that a power of attorney agent or a person authorised in writing by the payee or the holder in due course of a cheque is a competent person to make a complaint in writing u/s 142 of the Act. On the facts, it was held that, as the prosecution was initiated by the complainant in his personal name for and on behalf of the corporate body and not in the name of the company, an authorisation was required and ought to have been produced before the court before taking cognizance. As no such authorisation was produced before taking cognizance, the complaint was held barred u/s 112 of the Act and required to be quashed.

12. In the light of the aforesaid facts and circumstances and in the light of the aforesaid discussion, in my view, since the complaints are filed in the name of the legal entity, respondent No. 2, there is no legal bar and the complaints are maintainable. Continuation thereof is absolutely in accordance with law, hence the question of abuse of the process of the court does not arise. In the same way, as the complaints are in consonance with the provisions of the Act, no interference is warranted in exercise of inherent powers. The ends of justice can also be met in continuing with proceedings as are to fulfil the paramount object of the Act. Hence, the petitions being devoid of merit are dismissed. Rule is discharged. Interim relief, if any, stands vacated. The trial court to proceed further in accordance with law.