(2011) 08 AHC CK 0181

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 7549 of 1991

Gun Nidhi Dalmia and Another — APPELLANT

Vs

Arup Kumar Dua and Another — RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2012) 1 ACR 752 : (2011) 9 ADJ 669

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon''ble S.C. Agarwal, J.—This Application u/s 482 Cr.P.C. has been filed with a prayer to quash the entire proceedings in complaint case No. 317 of 1990 (Arup Kumar v. Gun Nidhi Dalmia and another) under Sections 420, 120-B, 406 IPC, P.S. Jhansi Kotwali, Jhansi pending in the Court of II Additional Munsif Magistrate, Jhansi.

Heard Sri G.S. Chaturvedi, senior advocate assisted by Sri Samit Gopal, learned counsel for the applicants and learned A.G.A. for the State.

2. Notice was sent to opposite party No. 1 by Registered Post A.D., but the same has not returned served or unserved and, therefore, vide order dated 29.3.2011, the service was deemed sufficient.

3. In brief, the facts are that the complaint was filed with the allegations that the complainant - opposite party No. 1 was the Proprietor of M/s. Punjabi Stores, Gandhi Road, Jhansi. In the last week of April 1985, applicant No. 2 Ram Mohan Srivastava came to the shop of the complainant and introduced himself as Regional Manager of M/s. Dalmia Biscuit Private Limited having a Factory at Rajapura, District Patiala, which used to manufacture biscuits and toffees. He

persuaded the complainant to send a sum of Rs. 2000/- as security and further amount for purchasing goods from the said Firm. The complainant sent a sum of Rs. 17,000/ - through two bank drafts for security and for purchase of goods to M/s. Dalmia Biscuit Private Limited, which were encashed, but no supply was ever made to the complainant nor the amount was refunded. The complainant met the accused persons and requested for repayment of money paid earlier and at that stage, the accused Gun Nidhi Dalmia issued a cheque No. QVA 168594 dated 10.8.1985 drawn on Punjab National Bank, Rajapura, District Patiala and sent it to the complainant, but the said cheque was dishonoured by the Bank. A registered notice was given on 11.11.1985, but despite notice, the amount was not paid. In September 1990, the complainant again went to the accused and demanded his money, but the accused persons refused to repay the amount and notice dated 3.9.1990 was refused. It was alleged that the accused persons have defrauded the complainant. After recording the statement of the complainant u/s 200 Cr.P.C. and statements of Anil Gupta and Ashwani Kumar u/s 202 Cr.P.C, learned Magistrate summoned the applicants for trial under Sections 420, 120-B, 406 IPC vide order dated 13.3.1991.

4. Learned counsel for the applicants submitted that the incident took place in the year 1985 and the notice itself was given to the applicants on 11.11.1985, but despite dishonour of the cheque and non-payment of the amount, no complaint u/s 138 of Negotiable Instruments Act was filed by the complainant. Again notices were given on 8.10.1987 and 3.9.1990, but no suit for recovery of money was ever filed against the applicants. Learned counsel for the applicants submitted that there is no evidence on record to show any conspiracy to cheat or criminal misappropriation of money. The Company was facing severe financial and production problems on account of terrorism in Punjab and due to the state of insecurity, the functioning of the Company came to a complete halt. In February 1998, the Management of the Company was taken over by Sri S.H. Hanspal and Sri S.S. Manchanda and all the assets and liabilities of the Company were taken by the new Management and, therefore, the liability to pay the complainant also stood transferred to the new Management. Various steps were taken to revive the Company, but the Board of Industrial and Financial Reconstruction (B.I.F.R.), after hearing, on 10.9.1990, declined to consider the proposals of the Company for rehabilitation.

5. Learned counsel further submits that no suit for recovery of money was ever filed by the complainant against the Company for the applicants. The case relates to commercial transaction and is civil in nature and the Company was unable to pay the amount due to financial difficulties and became a sick Company and no criminal intent can be attributed to the applicants. The complaint itself was filed in the year 1990 after a lapse of about 5 years.

Learned A.G.A., however, supported the impugned order and submitted that summoning order has been passed on the basis of material available on record and does not call for any interference at this stage.

6. The facts narrated in the affidavit accompanying the application u/s 482 Cr.P.C. are supported by an affidavit and the facts alleged therein have not been controverted by the complainant by means of a counter-affidavit, therefore, the facts alleged therein shall be deemed to be correct.

7. It is apparent that the complainant sent money to M/s. Dalmia Biscuit Private Limited for the purposes of security and advance payment of goods to be purchased, but neither the money was refunded nor goods were supplied. The payment was not made to the applicants, but was directly sent to M/s. Dalmia Biscuit Private Limited, The said Firm issued a cheque, which was dishonoured. In these circumstances, the offence, if any, is squarely covered by the provisions of Section 138 of Negotiable Instruments Act and a complaint u/s 420, 120-B, 406 IPC is not maintainable. It may also be noted that for a period of 4 -5 years from 1985 to 1990, the complainant went on issuing notices, but did not file any complaint u/s 138 of Negotiable Instruments Act nor did he file any civil suit for the recovery of the money. It is also apparent that M/s. Dalmia Biscuit Private Limited became a sick Company and even the B.I.F.R. Refused to rehabilitate it. For this reason, sick Firm was unable to repay the amount and it cannot be said that the Company or its partners or officers or officials had any criminal intent to defraud the complainant or to commit any criminal breach of trust. The proper remedy for the complainant was to file a complaint u/s 138 of Negotiable Instruments Act and filing of criminal complaint after 5 years under Sections 420, 120-B, 406 IPC was simply an abuse of the process of law.

8. In these circumstances, the summoning order cannot be maintained and the purpose of filing the criminal complaint was simply to harass the applicants so that the applicants may be coerced to pay the amount due against the Firm M/s. Dalmia Biscuit Private Limited. Consequently, the Application deserves to be allowed.

Application u/s 482 Cr.P.C. is allowed.

The entire proceedings in complaint case No. 317 of 1990 (Arup Kumar v. Gun Nidhi Dalmia and another) under Sections 420, 120-B, 406 IPC, P.S. Jhansi Kotwali, Jhansi pending in the Court of II Additional Munsif Magistrate, Jhansi are quashed.