

(2023) 07 DEL CK 0282

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 5216 Of 2023

Hiren Mahendra Botadra And Anr

APPELLANT

Vs

NLMK India Service Centre Pvt. Ltd

RESPONDENT

Date of Decision : 28-07-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 251, 263(g), 482
Negotiable Instruments Act, 1881 — Section 138, 139, 143, 145, 145(2)

Citation : (2023) 07 DEL CK 0282

Hon'ble Judges : Rajnish Bhatnagar, J

Bench : Single Bench

Advocate : Velpula Audityaa, Samarth Chowdhary, Nirmal Prasad, Shrey Sharma, Rachit Devgun, Seemant K. Garg

Final Decision : Dismissed

Judgement

Rajnish Bhatnagar, J

CRL.M.A. 19821/2023 (exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CRL.M.C. 5216/2023 & CRL.M.A. 19820/2023

1. The present petition under Section 482 Cr.P.C has been filed by the petitioners seeking the following reliefs:-

"a. Quash the order dated March 17, 2021 passed by the Ld. Metropolitan Magistrate (NI Act), Saket Court (South), New Delhi ("MM"), in C.C. NI ACT 270 / 2020 titled "M/s. NLMK India Service Centre Pvt. Ltd. v. M/s. Nexus Electro Steel Pvt. Ltd. & Ors.", qua the Petitioners / Accused 3 & 4, and all consequential proceedings arising therefrom;

b. Quash the proceedings pending before the Ld. Metropolitan Magistrate (NI

Act), Saket Court (South), New Delhi ("MM"), in C.C. NI ACT 270 / 2020 titled "M/s. NLMK India Service Centre Pvt. Ltd. v. M/s. Nexus Electro Steel Pvt. Ltd. & Ors." qua the Petitioners/Accused 3 & 4;

c. Pass any other or further orders which this Hon'ble Court deems fit and proper in the facts and circumstances of the present case, in the interests of justice."

2. The complainant (respondent herein) had instituted a complaint under Section 138 of Negotiable Instruments Act, 1881 against the present petitioners in respect of non-payment against one dishonoured cheque for the amount of Rs. 99,14,301/- issued by petitioners in favour of the respondent.

3. The Metropolitan Magistrate vide order dated 17.03.2021 in Complaint Case no. 270/2020 issued summons under Section 138 N.I. Act requiring the petitioners to attend the Court.

4. The petitioners feeling aggrieved, filed the present petition invoking jurisdiction of this Court U/s 482 Cr.P.C.

5. It has been mainly argued by the Ld. Counsel for the petitioners that the complaint filed by the complainant under Section 138 of Negotiable Instruments Act, 1881 against the petitioners is false and frivolous. He submitted that the petitioners cannot be held to be vicariously liable for the alleged offence as they were only non-executive directors of M/s Nexus Electro Steel Ltd. at the relevant time when the offence was committed and they were neither in charge of the conduct of business nor the day to day affairs of accused company. He further submitted that the complainant has failed to bring on record any evidence to suggest that the petitioners had knowledge regarding the return of the said cheques. Furthermore, Ld. counsel for the petitioners submitted that no specific roles have been assigned to the present petitioners and the petitioners were neither signatories to the cheque or to the Settlement Agreement under which the cheque was purportedly issued and therefore, it cannot be assumed that there exists a legally enforceable debt or liability against the petitioners.

6. Ld. Counsel for the petitioners in support of his contentions has placed reliance on the following judgments:

- Pooja Ravinder Devidasani vs. State of Maharashtra [(2014) 16 SCC 1]
- K.K. Ahuja vs. V.K. Vora [(2009) 10 SCC 48]
- Girdhari Lal Gupta vs. D.H. Mehta [(1971) 3 SCC 189 : 1971 SCC (Cri) 279]
- State of Karnataka vs. Pratap Chand [(1981) 2 SCC 335 : 1981 SCC (Cri) 453]
- Katta Sujatha vs. Fertilizers & Chemicals Travancore Ltd. [(2002) 7 SCC 655 : 2003 SCC (Cri) 151]
- S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla [(2005) 8 SCC 89]
- Sunita Palita vs. Panchami Stone Quarry [(2022) 10 SCC 152]

- Girdhari Lal Gupta vs. D.H. Mehta [(1971) 3 SCC 189 : 1971 SCC (Cri) 279 : AIR 1971 SC 2162]

- Sabitha Ramamurthy vs. R.B.S. Channabasavaradhya [(2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621]

7. On the contrary, Learned counsel for the respondent has pointed out that the cheque in question was presented within its validity period, the complainant got the intimation of cheque being dishonored vide return memo dated 07.04.2020 and subsequently, the legal notice was issued on 23.05.2020. He submitted that the petitioners still failed to make any payment and knowing well that the cheque will not be honoured by the drawee bank, issued the cheque in question. He further submitted that the presumption under Section 139 N.I Act includes a presumption that there exists a legally enforceable debt and liability, and therefore, no case for quashing of the complaint case and the proceedings emanating therefrom is made out.

8. As far as the judgments relied upon by the Ld. Counsel for the petitioners are concerned, there is no dispute with regard to the proposition of law laid down in the said judgments that though a Non-executive Director is the custodian of the governance of the company but s/he is not involved in the day-to-day affairs of the running of its business; however, with due regard, the same are not applicable to the facts of the present case as perusal of the records of the case shows that the petitioners have been categorically mentioned as 'Directors of M/s Nexus Electro Steel Ltd.' in the Complaint Case No. 270/2020 registered under section 138 of the Negotiable Instruments Act, 1881 against the petitioners and there is not even an iota of evidence placed on record by them at this stage which shows that the petitioner no. 2 was merely a Non-Executive director in the accused company.

9. Now coming to the legal position in this case and taking into consideration the various provisions of Cr.PC which have been discussed in various judgments time and again demonstrate that the Negotiable Instruments Act, provides sufficient opportunity to a person who issues the cheque. Once a cheque is issued by a person, it must be honoured and if it is not honoured, the person is given an opportunity to pay the cheque amount by issuance of a notice and if he still does not pay, he is bound to face the criminal trial and consequences. It is seen in many cases that the petitioners with malafide intention and to prolong the litigation raise false and frivolous pleas and in some cases, the petitioners do have genuine defence, but instead of following due procedure of law, as provided under the N.I. Act and the Cr.PC, and further, by misreading of the provisions, such parties consider that the only option available to them is to approach the High Court and on this, the High Court is made to step into the shoes of the Metropolitan Magistrate and examine their defence first and exonerate them. The High Court cannot usurp the powers of the Metropolitan Magistrate and entertain a plea of accused, as to why he should not be tried under Section 138 of the N.I. Act. This plea, as to why he should not be tried under Section 138 of the N.I. Act

is to be raised by the accused before the Court of the Metropolitan Magistrate under Section 251 of the Cr.PC & under Section 263(g) of the Cr.PC.

10. The offence under Section 138 of the N.I. Act is an offence in the personal nature of the complainant and since it is within the special knowledge of the accused as to why he is not to face trial under section 138 N.I. Act, he alone has to take the plea of defence and the burden cannot be shifted to complainant. There is no presumption that even if an accused fails to bring out his defence, he is still to be considered innocent. If an accused has a defence against dishonour of the cheque in question, it is he alone who knows the defence and responsibility of spelling out this defence to the Court and then proving this defence is on the accused. Once the complainant has brought forward his case by giving his affidavit about the issuance of cheque, dishonour of cheque, issuance of demand notice etc., he can be cross-examined only if the accused makes an application to the Court as to, on what point he wants to cross examine the witness(es) and then only the Court shall recall the witness by recording reasons thereto.

11. Sections 143 and 145 of the N.I. Act were enacted by the Parliament with the aim of expediting trial in such cases. The provisions of summary trial enable the respondent to lead defence evidence by way of affidavits and documents. Thus, an accused who considers that he has a tenable defence and the case against him was not maintainable, he can enter his plea on the very first day of his appearance and file an affidavit in his defence evidence and if he is so advised, he can also file an application for recalling any of the witnesses for cross-examination on the defence taken by him.

12. In view of the procedure prescribed under the Cr.PC, if the accused appears after service of summons, the learned Metropolitan Magistrate shall ask him to furnish bail bond to ensure his appearance during trial and ask him to take notice under Section 251 Cr.PC and enter his plea of defence and fix the case for defence evidence, unless an application is made by an accused under Section 145(2) of N.I. Act for recalling a witness for cross-examination on plea of defence. If there is an application u/s 145(2) of N.I. Act for recalling a witness of complainant, the court shall decide the same, otherwise, it shall proceed to take defence evidence on record and allow cross examination of defence witnesses by complainant. Once the summoning orders in all these cases have been issued, it is now the obligation of the accused to take notice under Section 251 of Cr. PC., if not already taken, and enter his/her plea of defence before the concerned Metropolitan Magistrate's Court and make an application, if they want to recall any witness. If they intend to prove their defence without recalling any complainant witness or any other witnesses, they should do so before the Court of Metropolitan Magistrate.

13. In the instant case, the petitioners were appointed as directors in the accused company, namely, M/s Nexus Electro Steel Ltd. on 01.12.2003 and 05.12.2003, respectively. The cheque in question bearing no. 007351 dated

31.03.2020 for an amount of Rs. Rs. 99,14,301/- was dishonored with remark 'Account Blocked' vide returning memo dated 27.04.2020. Subsequently, the Complaint case No. 270/2020 was registered against the petitioners under Section 138 of Negotiable Instruments Act, 1881 on 09.12.2020 in respect of non-payment against the abovesaid dishonoured cheque issued by petitioners in favour of the respondent.

14. As far as the contention of the Ld. Counsel for the petitioners that the summons have been issued in a mechanical manner by the Ld. MM, does not cut much ice as perusal of the Summoning Order dated 17.03.2021 in Complaint Case no. 270/2020 shows that the summons under Section 138 of Negotiable Instruments Act, 1881 have been rightly issued after due consideration of the facts of the present case. The relevant portion of the impugned Summoning Order dated 17.03.2021 reads as follows:

"It is the case of the complainant that the accused no. 1 is a company incorporated under The Companies Act and accused no. 2-4 are the directors of accused no.1 and responsible for the day to day affairs of the company. Earlier Corporate Insolvency Resolution proceedings were initiated by the complainant. against accused no.1 before the H'ble NCLT, Chennai. Accused no. 2 to 4 approached the complainant for settling their due and matter was settled vide agreement dated 20.4.2019 whereby accused issued 2 PDC bearing no. 007350 and 007351 to the complainant for a total amount of Rs. 1,98,28,603/-. NCLT proceedings were withdrawn after the settlement.

Present complaint pertains to the cheque bearing no. 007351 of Rs. 99,14,301/- (Rupees Ninety Nine Lakhs, Fourteen Thousand, Three Hundred and one) dated 31.03.2020 drawn on ICICI Bank, Chennai which was issued by accused no. 1 to the complainant for the above said settlement agreement. The complainant presented and deposited the said cheque in its Bank- SBI, Mandir Marg, Saket, same was returned dishonored vide return memo dated 27.04.2020 stating the reason that "Account Blocked". The complainant sent a statutory legal notice dated 23.05.2020 to the accused.

Complaint, affidavit of evidence and other annexed documents perused. Prima facie, the complaint appears to have been made within the extended period of limitation and falls under the territorial jurisdiction of this court. I hereby take cognizance of the offence punishable under Section 138 Negotiable Instruments Act qua the cheque in question. There is no requirement of formal tendering as the affidavit and documents annexed with is duly marked, initialed and signed by the oath commissioner."

15. Ld. counsel for the petitioners has further contended that the petitioner no. 2 was only non-executive director of M/s Nexus Electro Steel Ltd. at the relevant time when the offence was committed and the petitioners were neither in charge of the conduct of business nor involved in the day to day affairs of the accused company. In my considered opinion, the same has no force in it as the

petitioners have been categorically mentioned as 'Directors of M/s Nexus Electro Steel Ltd.' in the Complaint Case No. 270/2020.

16. Moreover, the reliance placed upon the Resignation Letter dated 24.07.2020 of petitioner no.2 , namely, Saravanan Manoharan and the Form No. DIR-11 dated 25.07.2020, by the counsel for the petitioner is a misplaced one as perusal of the same shows that it has nowhere been specified, neither in Resignation letter dated 24.07.2020 nor in the Form No. DIR-11 dated 25.07.2020 that the petitioner no.2 was a non-executive director. It is pertinent to mention that the Complaint Case No. 842/2020 against dishonor of Cheque No. 1 stood initiated against the petitioners on 24.12.2019 and the cheque in question i.e., cheque no. 2 was dated 31.03.2020 and got dishonored vide returning memo dated 27.04.2020, that is when the petitioner no. 2 was still the director of accused company as she had resigned from directorship much later on 24.07.2020. Furthermore, as far as the contention of counsel for the petitioners that the petitioners were neither in charge of the conduct of business nor involved in the day to day affairs of M/s Nexus Electro Steel Ltd., are issues which cannot be looked into at this stage and are a matter of trial.

17. Therefore, I find no flaw or infirmity in the proceedings pending before the Trial Court. However, the Trial Court shall certainly consider and deal with the contentions and the defense of the petitioners in accordance with law.

18. Accordingly, the present petition along with pending application is dismissed being devoid of any merits.