
(2004) 12 MP CK 0034

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 852 of 2004

Jain Traders

APPELLANT

Vs

M.P. Financial Corporation

RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Companies Act, 1956 — Section 4
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 109, 420

Citation : (2005) 2 MPHT 341

Hon'ble Judges : Sugandhi Lal Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.L. Jain, J.—Invoking extra-ordinary jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, petitioner has filed this petition for quashing the proceedings, in Criminal Case No. 236/2002, pending in the Court of Chief Judicial Magistrate, Sagar.

2. Facts leading to the registration of the case pithily recited are thus:--

3. Respondent M.P. Financial Corporation filed a complaint u/s 138 of the Negotiable Instrument Act (for short "the Act") read with Section 4 of Banking Public Financial Institutions and Negotiable Instrument Laws. (Amendment) Act, 1988 (66 of 1988) Companies Act (for short "the Companies Act") and Section 420 read with Section 109 of the IPC alleging that the complainant advanced a sum of Rs. 17 lacs to M/s Om Cleaning & Processors Pvt. Ltd.

4. One Sunil Kumar Jain is the Director of M/s Om Cleaning & Processors Pvt. Ltd. He issued numerous post dated cheques of different dates. These cheques were signed by partner of Jain Traders, Aruna Jain. One cheque No. 185807, dated 25-11-2000 of the amount of Rs. 1,50,000/- of State Bank of India, Mauranipur was submitted by the respondent to Union Bank of India, Sagar

Branch on 25-11-2000 for clearance.

5. The cheque was dishonoured by the State Bank of India due to insufficient fund in the account of the drawer.

6. On receiving the information from the bank regarding return of the cheque as unpaid, the payee made a demand for payment of the said amount of money by giving a notice in writing to M/s Om Cleaning. As M/s Om Cleaning failed to make payment of the said amount of money to the payee, Corporation M.P. Finance Corporation filed a complaint under the aforesaid Sections. CJM, Sagar vide order dated 3-4-2001 registered the complaint for offence punishable u/s 138 of the Act only against both the accused persons namely M/s Om Cleaning and Processors Pvt. Ltd. and the present petitioner. Complaint was not registered u/s 4 of the Companies Act or under Sections 420 and 109 of the IPC.

7. The petitioner has filed this petition for quashing the proceedings before CJM, Sagar on the ground that one of the essential ingredients of the offence u/s 138 of the Act is that the payee of the cheque should make a demand for the payment of the amount of the cheque by giving a notice in writing to the drawer of the cheque within 15 days of the receipt of the information by him from the bank regarding the return of the cheque as unpaid and, if the drawer of such cheque fails to make the payment of the said amount of money to the payee within 15 days of the receipt of the said notice, but does not exist in the present case. No notice was given to the petitioner, therefore, in the absence of such notice, the Court can not take cognizance of the offence. The petitioner has filed the copy of a complaint.

8. A perusal of copy of demand notice address to M/s Om Cleaning and Processors Pvt. Ltd. reveal that notice was issued to M/s Om Cleaning and Processors only. No such notice was served to the present petitioner.

9. The case was adjourned number of times on the request of the Counsel for the respondent. Counsel for the respondent could not show any notice which was given to the petitioner under Clause (b) of Section 138 of the Act. As the giving of notice is an essential ingredient of the offence u/s 138 of the Act, in the absence of notice, no case can be said to be made out.

10. Section 482 of the Cr.PC empowers this Court to exercise its inherent powers to prevent abuse of the process of the Court. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the Court to quash the same in exercise of the inherent powers u/s 482 of the Cr.PC.

11. Where the notice was issued only to M/s Om Cleaning and not to the present petitioner and there was no proper material to proceed against one of the accused persons, the continuation of the proceedings against the present petitioner would amount to abuse the process of the Court and the same has to be quashed and accordingly. The petition is, therefore, allowed. The proceedings

in Criminal Case No. 236/2002 against the present petitioner are hereby quashed.

12. The proceedings are being quashed against the petitioner on the assumption that notice u/s 138 of the Act has not been served upon them. In case the respondent satisfies the Trial Court that notice was issued to present petitioner also in terms of Section 138(b) of the Act, the Trial Court shall be at liberty to proceed against the petitioner also.