(2018) 04 MP CK 0020

In the Madhya Pradesh High Court

Case No : M. Cri. C. No. 21031 OF 2016

K. Sheshadrivashu And 3 Others — APPELLANT

Vs

State Of Madhya Pradesh And Another — RESPONDENT

Date of Decision : 02-04-2018

Acts Referred:

Constitution of India — Article 136
Code Of Criminal Procedure, 1973 — Section 200, 202, 482
Indian Penal Code, 1860 — Section 34, 120B, 405, 409, 415, 420, 467, 468, 471, 500
Negotiable Instruments Act, 1881 — Section 138

Citation : (2018) 04 MP CK 0020

Hon'ble Judges : J.P. GUPTA, J

Bench : Single Bench

Advocate : Manish Datt, Pawan Gujar, Rajesh Tiwari,

Final Decision : Allowed

Judgement

This petition under section 482 of the Cr.P.C. has been filed by the petitioners for quashment of the criminal complaint case no. RCT/600561/2016

pending before the court of J.M.F.C., Piparia, district Hoshangabad under Sections 120-B, 409, 420, 467, 468, 471, 500 r/w. Sec.34 of the IPC.

2. Facts, in brief, giving rise to this petition are that the petitioners are the employees / representatives of the M/s. BVSR ConstructionÂ Company

Pvt. Ltd. On behalf of the aforesaid company, a sub-contractÂ with regard to construction of road was given to the respondent no.2 / Complainant

Company. In view of the convenience and implementation of the construction work without hindrances, on behalf of theÂ respondent no. 2 -

company, a current Bank account was open in theÂ Central Bank of India, Branch Gadarwara and after getting the chequeÂ book issued by the

Bank was handed over to the petitioners being representatives of M/s. BVSR

Company after signature on behalf of the respondent no. 2 /

complainant company so that the petitioners may use the cheques in connection withÂ transaction relating to implementation of sub-contract but the

petitioners on behalf of their Company misused the cheques and some fund was utilized personally and without performing the construction work,

illegally and unauthorizedly payment was made. On perusal of the statement it was found that 12.5 Crore rupees is due against M/s. BVSR

Construction company represented by the petitioners and in this regard, a notice of demand for due amount was made but the same was not paid,

instead it was informed that the matter will be taken to arbitration then the respondent no. 2 / company informed to the Central Bank of India, Branch

Gadarwara for stopping the payment on the cheques. Thereafter, on behalf of the M/s. BVSR Construction company, dishonestly with intention to

commit fraud and cheating with forgery one cheque no. 13915 for a sum of Rs.4,10,24,000/- dated 28.7.2015 was produced before the Kotak

Mahindra Bank, Hyderabad which was dishonored by the Bank of complainant Company. Thereafter, on behalf of the M/s. BVSR Construction

Company, petitioner no.1 filed a complaint under Section 138 of the Negotiable Instrument Act, in which, warrant of arrest has been issued against the

representatives of the respondent no. 2 - complainant. The aforesaid act is punishable under the aforesaid sections of the IPC.Â Therefore, complaint

was filed before the court of J.M.F.C., Piparia on 18.7.2016 and the learned Magistrate after recording statements under Section 200 and 202 of the

Cr.P.C.Â and considering the documents submitted by the respondent no. 2 / complainant,Â took cognizance of the offences against the petitioners.

3. On behalf of the petitioners, the proceeding has been challenged here on the ground that prima-facie there is no material to take cognizance against

the petitioners with regard to commission of aforesaid offences. Prima-facie itÂ isÂ a dispute of account with regard to transaction took place under

the contract relating to construction of road. Hence, it is purely a civil dispute. This complaint has been filed just a counter blast to take revenge on

account of filing complaint under section 138 of the Negotiable Instrument act against the respondent no. 2 / Company.Â Â In this regard, learned

counsel for the petitioners has placed reliance on a judgment of the Apex court in the case of Sunil Kumar vs. Escorts Yamaha Motors Ltd.Â and others, (1999) 8 SCC 468, in which, it is held that if the cheque was given after signature for use for specific purposes and it was used for other

purposes and caused loss; and the FIR filed in this regard after filing of the complaint under Section 138 of the Negotiable Instruments Act by the

party to whom the cheques were given, prima-facie no offence punishable under sections 420, 467 and 468 of the IPC is made out and the

proceedings be quashed.

4. Learned counsel for the petitioners has also submitted that in the complaint filed by the respondent no. 2 / complainant, M/s. BVSR Construction

company has not been made party as an accused and in absence of arraying the company as an accused, the petitioners who are merely

representatives of the Company cannot be prosecuted for the offence which was committed by the Company as the actual beneficiary is the

Company and the cheque, about which, it is alleged that it was misused and prepared by forgery and action has been taken under Section 138 of the

Negotiable Instruments Act, is in favour of the Company and in this circumstance, the proceedings cannot be continued against the petitioners as held

by the Apex Court in the case ofÂ Sharad Kumar Sanghi Vs. Sangita Rane (2015) 12 SCC 781. Hence, the aforesaid proceedings be quashed.

5. Having considered the contentions of learned counsel for the parties and on perusal of the record it is evident thatÂ in this case the substance of

the grievance is that the cheque book was given after signature with a specific direction to use with regard to payment if required for implementation

of contract relating to construction of road but the cheque was used for other purposes than that and efforts were made to encash it and after getting

the cheque dishonored, the petitionersâ?? company filed complaint under Section 138 of the N.I. Act against the respondent no. 2 /complainant. It is

also evident that the complaint under Section 138 of the N.I. Act has been filed by M/s. BVSR Construction Company, therefore, the beneficiary

under the alleged act is the company and the petitioners have merely worked on behalfÂ of the company.

6. In the judgment rendered in the case of Sunil (supra), on which learned counsel has placed reliance, it is held that in the aforesaid circumstances,

prima-facie no offence is made out and the proceedings be quashed. It would be appropriate to quote here relevant paras 2 and 5, as under :-Â

2. â??The decision of the Division Bench of Delhi High Court, quashing the F. I. R. No. 285 of 1998 at P. S. Rajouri Garden for offence under

Sections 420/406/468, I. P. C. is under challenge in this appeal by the informant. The informantappellant filed the FIR alleging therein that the

respondents by an act of conspiracy committed criminal breach of trust by presenting blank cheques, signed by the appellant for withdrawing money

for a purpose for which it had not been given and by so doing, they have caused a loss of Rs. 8,982/- inasmuch as this was the commission which the

appellant had to bear. The gravamen of the appellant's case in the FIR is that certain cheques had been given to the respondents more particularly the

Commercial Manager with the specific understanding that these cheques can be presented against delivery of future vehicles and not for any past

liability or dues, but the respondents presented the same which of course could not be encashed in view of the directions given by the appellant-

drawer. However the appellant had to sustain the loss of Rs. 8982/- as commission charges. The respondents filed application in Delhi High Court for

quashing of FIR inter alia on the ground that the averments in the FIR do not make out the offence of either Sec. 406 or Sec. 420 as the necessary

ingredients under Sections 405 and 415 of the IPC have not been indicated. The respondents also took the ground that the criminal proceeding

pursuant to the F. I. R. has been initiated with an ulterior motive and thereby there has been a gross abuse of process of law and as such the FIR

should be quashed. The High Court on consideration of the case of the parties and on the materials was of the opinion that the informant himself has

already resorted to civil remedy for adjudication by an arbitrator and thereafter having lodged the complaint must be held to have the abuse of the

process of law and, therefore, the F. I. R. should be quashed in the interest of justice.

5. Bearing in mind the law laid down by this Court in the cases referred to earlier and the contentions raised by the learned Counsel appearing for the

parties and on examining the allegations made in the FIR, we are persuaded to accept the submission of Mr. H.N. Salve and Mr. Arun Jaitley,

appearing for the respondents that necessary ingredients of the offence of cheating or criminal breach of trust have not been made out and on the

other hand the attendant circumstances indicate that the FIR was lodged to pre-empt the filing of the criminal complaint against the informant under

Section 138 of the Negotiable Instruments Act. The High Court, therefore, was well within its power in quashing the FIR as otherwise it would

tantamount to an abuse of process of Court. We, therefore, see no justification for our interference with the impugned decision of the High Court in

exercise of power under Article 136 of the Constitution.â??

7. The Apex court in the case of Sharad Kumar (supra), on which theÂ learned counsel has placed reliance, is held that when the act is done on

behalf of the company and the company has not been arrayed as an accused, no criminal proceedings can be initiated against the representatives /

employees of the company unless they are personally responsible for the act. In this regard it would be appropriate to quote here relevant paras 11

and 13, as under :-

11. â??In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been

made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact,

principally the allegations are against the Company. There is no specific allegation against the Managing Director. When a company has not been

arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a

three-Judge Bench in Aneeta Hada v. Godfather Travels and Tours (P) Ltd. Aneeta Hada v. Godfather Travels and Tours P Ltd., 2012 5 SCC 661 in

the context of the Negotiable Instruments Act, 1881.

13. When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of

completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal

proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and

quash the criminal proceedings initiated by the respondent against the appellant.â??

8. Apart from it, prima-facie it appears that it is a dispute with regard to account having nature of civil dispute and the complainant /respondent no 2

without taking recourse to resolve the matter in civil side simultaneously has made efforts to implicate them by setting criminal case into motion. In this regard, a reference can be given to the case of GHCL Employees Stock Option Trust Vs. Kranti Sinha (2013) 4 SCC 505, in which relevant para is

13 reproduced as under:-Â

13. There is no dispute with regard to the legal proposition that the case of breach of trust or cheating are both a civil wrong and a criminal offence,

but under certain situations where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence.â??

9. In view of the aforesaid discussion, this court is of the considered view that the proceedings against the petitioners on the complaint filed by the

respondent no 2 / complainant deserves to be set â?"aside.Â Â Â Hence, this court in exercise of inherent powers under section 482 of Cr.P.C. with

a view to preventÂ Â abuse of the process of the court and ensure justice in the case, this petition is allowed and proceedings against the petitioners

as criminal complaint case No. RCT/600561/2016 pending in the court of JMFC, Piparia, District Hoshangabad are hereby quashed.Â

A copy of this order be sent to the concerned court below for information and necessary compliance.