
(2011) 09 AHC CK 0020
In the Allahabad High Court
Case No : Application No. 25304 of 2011

Kabir Mool Chandani and Another	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 82
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 420

Citation : (2012) 3 BC 193

Hon'ble Judges : Naheed Ara Moonis, J

Bench : Single Bench

Advocate : Rajesh Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Naheed Ara Moonis, J.—Heard, the learned Counsel for the applicants, the learned AGA for the State and perused the record. The instant application u/s 482, Cr.P.C. has been filed by the applicants with a prayer to quash the entire criminal proceedings, Case No. 5460 of 2010, Jagdish Kumar Sood v. Kabir Mool Chandani & Another, whereby the applicants have been summoned u/s 138, N.I. Act, P.S. Chhatta, District Agra, pending before the Court of learned Additional Judicial Magistrate, Court No. IX, Agra.

2. The opposite party No. 2 had purchased Akai branded television from M/s. Vairan International Limited, Tolstoy Road, New Delhi of which the applicants are the authorised signatories/directors related with the affairs of the company. A scheme was launched by the company that on the purchase of Akai television of 29 inches a post-dated cheque would be given by the company. In pursuance of the advertisement, the opposite party No. 2 had purchased a television on 5.7.1998 of Rs. 28,850/- and the company had given the receipt thereof and a post dated cheque No. 585061 dated 5.6.2004 of Rs. 30,000/- was given to the opposite party No. 2 by the authorised signatory of the company. When the said

cheque was deposited with in the statutory period in the Bank, it was dishonoured with the endorsement that account closed on 10.9.2004. The complainant had given a legal notice on 16.9.2004 which was duly received by the company, but neither any reply was given, nor the money was returned and as such the complaint was filed on 24.11.2004 that they may be prosecuted u/s 138, N.I. Act and u/s 420, IPC. The Court below had taken the notice of the affidavit filed by the complainant and the cheque, cash memo and the postal receipts and on the basis of which prima facie arrived at the conclusion that the applicants have committed an offence u/s 138, N.I. Act and thereafter, issued summons to appear before the Court on 21.2.2005.

3. It is contended by the learned Counsel for the applicants that they have nothing to do with the business as well as they were not aware about any such advertisement of the company nor they had issued any cheque to the opposite party No. 2. The entire allegations are absolutely vague and concocted. In support of his contention supplementary affidavit annexing a copy of the alleged cheque has been filed showing that the cheque does not bear their signatures and as such the prosecution of applicants is absolutely illegal. The applicants have no knowledge about the issuance of bailable and non bailable warrants.

4. Per contra, the learned AGA has contended that the issuance of the aforesaid cheque by the applicants, which is being denied by the applicants, is a disputed question of fact, can only be considered at the stage of trial after leading evidence by both the parties. The proceedings u/s 82, Cr.P.C. has already been initiated against the applicants, but they have not appeared. Now the non bailable warrant has also issued against them and the case is pending since 2005 against them, therefore, the petition deserves to be dismissed on the ground of inordinate delay and laches.

5. From the perusal of the complaint it is evident that the applicants had given a cheque to the complainant and was dishonoured, the opposite party No. 2 had given a legal notice to which the applicants failed to give any reply nor returned the money to the opposite party No. 2. The defence can only be considered by leading evidence by both the parties. At this stage meticulous analysis is not required and cannot be said that no offence is made out against the applicants. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court u/s 482, Cr.P.C. to thwart the legitimate prosecution at its inception. It would be nothing short of travesty of justice if the authorised signatories/or directors of the company who having duped a third party by denying or making false statements that some others were in charge of the company/firm, at a subsequent stage seek protection from prosecution on the ground that they were not responsible about any affair of the company, such a proposition is against the law of natural justice, that none shall be allowed to take advantage of his own default. At this stage, only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of *R.P. Kapur Vs. The State of Punjab*, *State of Haryana v. Bhajan Lal*, VI (2005)

SLT 529=111 (2005) CLT 201 (SC)=1992 SCC (Cr.) 426, State of Bihar v. P.P. Sharma, 1992 SCC (Cr.) 192, and lastly Zandu Pharmaceutical Works Ltd v. Mohd. Saraful Haq and Another, 2005 SCC (Cr.) 283.

6. There is no illegality in the summoning order passed against the applicants, therefore, the prayer for quashing of the entire criminal proceedings is refused. The petition is accordingly dismissed. The trial Court is directed to proceed with the case against the applicants in accordance with law.

7. However, it is directed that in case, the applicant appears and surrenders before the Court below within 30 days from today and applies for bail, his prayer for bail shall be considered and decided expeditiously in view of the settled law laid by this Court in the case of Amrawati and Another v. State of U.P., 2004 (57) ALR 290 as well as judgment passed by Hon''ble Apex Court reported in II (2009) CCR 206 (SC)=2009(3) ADJ 322 (SC) Lal Kamendra Pratap Singh v. State of U.P.

8. The applicants are free to move an exemption application for their appearance through Counsel or to claim discharge, which may be considered by the Court below in accordance with law. With the aforesaid directions, this petition is dismissed.