
(2003) 12 RAJ CK 0001

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 1084 of 2002

Kirti Prem Raj Jain

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 19-12-2003

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22A

Citation : (2006) 2 BC 152 : (2005) 125 CompCas 828 : (2004) 56 SCL 630

Hon'ble Judges : N.N. Mathur, J

Bench : Single Bench

Advocate : M.K. Garg, for the Appellant; D.D. Kelia and Sandeep Mehta, for the Respondent

Final Decision : Dismissed

Judgement

N.N. Mathur, J.—These five revision petitions u/s 397/401 of the Code of Criminal Procedure are directed against the order of the "Additional Chief Judicial Magistrate (Fast Track), Bikaner whereby on different dates he has read over the accusation to the petitioners for offence u/s 138 of the Negotiable Instruments Act.

2. It appears that "Esskay Remedies Ltd." (hereinafter referred to as "ERL") having its Head Office at Baroda by executing an agreement appointed M/s. Om Arham Marketing Company "Carrying and Forwarding Agent" (hereinafter referred to as "C & F Agent") of the manufacturer for the sale of its product in the Northern Rajasthan. The petitioner herein Kirti Jain is the Managing Director and Sunil and Hitesh are the Directors of ERL. The said company is now carrying on its business in the name of M/s. Nissan Formulations Ltd. M/s. Om Arham Marketing Company (hereinafter referred to as "the complainant") filed a complaint against the EPL, M/s. Nissan Formulations Ltd. and Kirti Jain and other partners in the Court of Judicial Magistrate, Bikaner for offence u/s 138 of the Negotiable Instruments Act. M/s. Nissan Formulations Ltd. and EPL are

hereinafter referred to as "the accused company". It is averred that accused company by executing the agreement dated 26-11-1998 engaged the complainant company as C & F Agent. As per the terms and conditions, the complainant gave a demand draft to the accused company for a sum of Rs. 8,00,000 as a cash security. However, the accused company did not indulge into the business with them and terminated the agency on 5-4-1999. Cheques were issued in the sum of Rs. 2,00,000 in favour of the complainant company as refund of cash security. There is allegation of interpolation in the date of issue of cheques. When the cheques were presented before the Bank, they were returned with endorsement "referred to drawer". The learned Magistrate has taken cognizance against the petitioners for offence u/s 138 of the Negotiable Instruments Act.

3. It is contended by the learned counsel that accused company has been declared a sick company by the Board for Industrial and Financial Reconstruction (hereinafter referred to as "the BIFR") on 25-5-1999, prior to the issuance of the cheques. Hence, criminal proceedings u/s 138 of the Act of 1881 cannot proceed in view of the Sections 22 and 22A of the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA").

4. The learned counsel has placed reliance on the decision of the Apex Court in Kusum Ingots and Alloys Ltd. v. Pennar Peterson Securities Ltd. [2000] 34 SCL 88. On the other hand, it is submitted by the learned counsel for the complainant that the contention is premature as it will be open for the accused company to place the material in this regard before the learned Magistrate. It is also submitted by the learned counsel that BIFR has not completely restrained the company from transferring the assets. On the contrary, reading of the order of BIFR shows that since the unit is operating the current assets may be utilised to the extent necessary for maintaining the day-to-day operations. Thus, the relevant material is required to be placed before the trial Court and the decision will be taken in the facts and circumstances of the case.

5. I have heard learned counsel for the parties and carefully gone through the judgment of the Apex Court in B.S.L. Ltd. v. Gift Holdings (P.) Ltd. [2000] 24 SCL 351 and Kusum Ingots and Alloys Ltd. 's case (supra). I have also gone through the judgment of the learned Single Judge of this Court in World Tex Limited and Others Vs. State of Rajasthan and Another, It will be relevant to acquaint with the Section 22A of the SICA, which reads as follows :--

"22A. Direction not to dispose of assets.--The Board may, if it is of opinion that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order in writing, direct the sick industrial company not to dispose of, except with the consent of the Board, any of its assets--

(a) during the period of preparation or consideration of the scheme u/s 18; and

(b) during the period beginning with the recording of opinion by the Board for

winding up of the company under Sub-section (1) of Section 20 and up to commencement of the proceedings relating to the winding up before the High Court concerned".

6. It clearly emerges from the reading of the provisions of Section 22A and the decisions of the Apex Court referred to above, that a sick company is restrained from disposing of any assets except with the consent of the Board. In view of this, it cannot be said that the proceedings u/s 138 of the Negotiable Instruments Act cannot be instituted during the period in which the restraint order passed by the BIFR remains operative. The sick company can dispose of or alienate any of its fixed assets with the approval of the BIFR. Thus, I am in agreement with the submission of the learned counsel for the complainant that issue raised by the learned counsel for the accused company is premature. It shall be considered at the appropriate stage by the trial Court.

7. No interference is warranted by this Court in its revisional jurisdiction at this stage. All the five petitions stands dismissed. Record in each case be returned forthwith.