

(1998) 12 BOM CK 0049

In the Bombay High Court

Case No : Criminal Writ Petition No. 1067, 1068, 1069, 1070 and 1211 of 1998

Krishna Murari Poddar and another

APPELLANT

Vs

The State of Maharashtra and another

RESPONDENT

Date of Decision : 10-12-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141
Penal Code, 1860 (IPC) — Section 34

Citation : (1999) 1 ALLMR 259 : (1999) 5 BomCR 432 : (2001) 105 CompCas 625 : (1999) CriLJ 1094

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : A.P. Munderggi and Ganesh Gole, for the Appellant; Jagtiani, instructed by C.F. Bilimoria and Hitesh C. Dabhi, R.Y. Mirza, Ms. U. Kejariwal, Assistant Public Prosecutor, for the Respondent

Judgement

D.G. Deshpande, J.—All these petitions involve a common question, though they are arising from the different orders of issue of process u/s 138 of the Negotiable Instruments Act and u/s 34 of the Indian Penal Code. Hence, they were heard together.

2. Mr. Munderggi who appeared for the petitioners in all these petitions raised three contentions. Firstly, that the Directors i.e. the petitioners of the accused - company had resigned before issuance of cheque. Secondly, the complainant did not prima facie prove that the petitioner Directors were responsible for the day to day business of the company as required u/s 141 of the Negotiable Instruments Act. Thirdly, he contended that complaint was filed without getting acknowledgment from the postal department in respect of the notices served upon the accused u/s 138 of the Negotiable Instruments Act and hence there was nothing before the complainant to show that the complaint was filed after the expiry of 15 days period from the date of service of the notice.

3. Mr. Jagtiani, on the other hand contended that accepting the ground of resignation of the Directors, the other two grounds were not raised before the trial Court and therefore the petitioners should not be heard in the matter. So far as Directors' liability is concerned, he contended that even though the Directors had resigned before issuance of cheque the complainant had relied upon the agreement of lease under which post dated cheques were issued on the date of the agreement and since the petitioners were Directors on the date of issuance of the cheque, they should not claim discharge on the ground that they had resigned before the date of the cheque. Mr. Jagtiani also contended that against some of the orders of issuance of process, the petitioners had moved the Sessions Judge by filing revision and had also filed these present petitions and it was not permissible for the accused to simultaneously resort to two proceedings in respect of the same order. However, at this juncture Mr. Mundergi made a statement across the bar that he will withdraw the revisions before the Sessions Judge. His statement is accepted.

4. Since the petitioners raised only one ground before the Magistrate i.e. in respect of the resignation being tendered by the Directors, I will consider that ground only in the present petitions. Other two grounds not being raised before the Magistrate cannot be considered. Firstly, on the ground that whether the petition was filed before or after the expiry of 15 days period (in the absence of postal acknowledgment with the complainant) is a question of fact which can only be decided by the Magistrate at the time of the trial. Secondly, there are allegations in the complaint that the present petitioners were Directors of the original accused No. 1 and were in charge of day to day affairs of the accused company. The same statement was made by the complainant in his verification statement and therefore as rightly argued by Mr. Jagtiani the complaint as against these petitioners cannot be dismissed on this ground.

5. The crucial question is whether or not the Directors liability u/s 138 of the Negotiable Instruments Act arise in these cases because of the resignation. So far as petitioner - K.M. Poddar is concerned, he was appointed as Director on 13-7-1988. He resigned from his post on 31-7-1996 and in the meeting held on 2-8-1996 his resignation was accepted. Petitioner S. Jalan was appointed as Director on 25-9-1989. He resigned on 14-4-1996 and his resignation was accepted on 22-8-1996. The dishonoured cheques in this case are dated 17-12-1996 and these are the admitted facts on record.

6. However, Mr. Jagtiani contended that from the facts narrated by the complainant in his complaint the accused - company entered into a lease agreement with the complainant on 17-9-1994 and at that time all the post dated cheques were issued to the complainant - company including the cheque dated 17-12-1996. Further, according to him when this agreement was signed on 17-12-1994 both the petitioners were Directors and since the post dated cheques were issued on the date of the agreement or in pursuance of the agreement, the petitioners subsequent resignation is of no consequence. On the other hand it

was contended by Mr. Mundergi that firstly there is nothing in the complaint to show that the post dated cheques were issued and at that time the petitioners were Directors. Mr. Mundergi took me through the entire complaint to substantiate his arguments. Secondly, according to Mr. Mundergi the offence of dishonour of cheque takes place when the cheque is presented and dishonoured and therefore whether the petitioners were Directors at the time of the issuance of the cheque is of no consequence. So far as this part of the argument of Mr. Mundergi was concerned, Mr. Jagtiani contended that there is a specific reference in the complaint in para 3 (e.g. in Writ Petition No. 1067 of 1998) regarding the agreement dated 17-9-1994 and consequently the complainant according to Mr. Jagtiani was entitled at the time of trial to produce the said agreement and prove the contents of the agreement in addition to what was stated in the complaint. I find considerable force in this argument. Admittedly, the liability of the accused to pay lease rent to the complainant arose pursuant to that agreement dated 17-9-1994 and since there is a reference to the said agreement in the complaint, the complainant is at liberty to rely upon the agreement and produce evidence regarding the terms of the agreement. Further, as pointed out by Mr. Jagtiani (who tendered copy of the agreement during his arguments) there is a schedule annexed to the said agreement wherein particulars of all the post dated cheques are given at Sr. No. 11. The particulars of the present cheque dated 17-12-1996 Cheque No. 592815 for Rs. 19,54,885/- have been given.

7. So far as the contentions of Mr. Mundergi regarding lacuna in the complaint and the verification statement about the petitioner accused being in day to day charge of the business of the company is concerned, it was contended by Mr. Jagtiani that in the complaint para 2 there are specific averments to the effect that present petitioners are the Directors of the accused company and are in charge of day to day affairs of the said company. The same statement was made by the complainant in his verification statement recorded before the Magistrate on oath and according to Mr. Jagtiani this was sufficient compliance with reference to section 141 of the Negotiable Instruments Act. He also contended that these allegations in the complaint and statement on oath by the complainant if considered with reference to the lease agreement dated 17-9-1994 there was sufficient material for the Magistrate to order issue of process. Mr. Jagtiani also contended that petitioner -accused K.M. Poddar was a Chairman of the accused company and it did not lie in the mouth of the petitioner K.M. Poddar to contend that even though he was a Chairman he was not in charge of the day to day affairs of the company.

8. Mr. Mundergi in support of his contentions, relied upon the Judgments reported in Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , and State of Haryana Vs. Brij Lal Mittal and Others, .

9. In Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, the Supreme Court has considered its earlier judgement in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, , where while considering the scope

of section 202 and 204 of the Code and the powers of the High Court u/s 482 and has laid down guidelines of which proceedings could be quashed. This guidelines are as under:

"(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused:

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceedings against the accused:

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

As per the first guideline process can be quashed if "absolutely no case is made out against the accused" or the complaint does not disclose any essential ingredients of the offence". The other guidelines are not attracted in the present case because there are no allegations that the allegation made in the complaint were patently absurd and inherently improbable or that the issue of process is capricious and arbitrary or that the complaint suffers from fundamental legal defects.

10. If the first guideline laid down by the Supreme Court as above is considered, then it cannot be said that the allegations made in the complaint and the statement made by the complaint on oath make out absolutely no case against the accused. It cannot also be said that the complaint does not disclose the essential ingredients of the offence which is alleged against the accused. As rightly argued by Mr. Jagtiani at the time of issuing the process the Magistrate has before him the complaint and the statement of the complainant recorded on oath and therefore since in the complaint and in the verification statement, the complainant has specifically given the essential ingredients of section 141 of the Negotiable Instruments Act and has made a statement on oath in that regard, the complainant succeeds in making out a prima facie case for issuance of process and it cannot be said according to Mr. Mundergi that there was absolutely no material for the Magistrate to order issue of process. I do not find any reason to reject this argument.

11. So far as the ruling of the Supreme Court in State of Haryana Vs. Brij Lal Mittal and Others, is concerned, the facts of that case are totally different. The same are reproduced herein below:

"2. On 7-8-1990 the District Drugs Inspector, Hisar (Haryana) visited the premises of M/s. Naresh Medical Agencies, (hereinafter referred to as "the firm")

purchased two samples of sodium chloride injections (hereinafter referred to as "the drugs") and sent portions of each of those samples to the Government Analyst for analysis. The Analyst submitted his reports on 10-9-1990/11-9-1990 to the effect that both the samples were not of standard quality and were misbranded and adulterated within the meaning of sections 17 and 17-A of the Drugs and Cosmetics Act, 1940 ("Act" for short). The Inspector on receipt of those reports, delivered copies thereof to the firm on 17-9-1990 along with a letter asking it to disclose the names and addresses and other particulars of the persons from whom the drugs had been purchased. In compliance therewith the firm, by its letter dated 1-10-1990, intimated the Inspector that M/s. Ajay Medical Agencies, Hisar and M/s. Mitson Distributors, Sirsa, were the distributors of the drugs and M/s. Mitson Pharmaceutical Pvt. Ltd. Sibilan, were the manufacturers. On getting that information the Inspector apprised those firms / company of his having purchased the drugs from the firm and the reports of the Analyst."

12. From the aforesaid facts, it will be clear that the Directors of the manufacturing company were made accused by the Drug Inspector mechanically and only upon information being given to him regarding them by the main accused. Naresh Medical Agencies. It is in this background that the Supreme Court while considering the provisions of the Drugs and Cosmetics, Act, held that the complainant was unable to make out any case against the respondent Directors because there was merely a bald statement regarding the role of the Directors. However, in the instant case not only that there is a statement of the complainant which fulfills the requirement of section 141 of the Negotiable Instruments Act but there is a statement on oath of the complainant recorded by the Magistrate. Therefore, both these submissions made by Mr. Munderggi cannot be accepted and consequently the petitions are liable to be dismissed. Hence, the order:

ORDER

All the petitions dismissed. Rule discharged in all the petitions, stay, if any, vacated.

If the petitioners who are residents of Calcutta apply for exemption from personal appearance on the ground of their residence, the Magistrate shall consider their application sympathetically.

13. Petition dismissed.