**(2013) 11 DEL CK 0350**

**In the Delhi High Court**

**Case No :** Criminal M.C. 2104 of 2011, Criminal M.A. No''s. 7643 of 2011 and 7929 of 2011

Mahendra M. Malviya and Others APPELLANT

Vs

Bhagwan Singh T. Rajput and Another RESPONDENT

**Date of Decision :** 28-11-2013

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 251, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 139

**Citation :** (2014) 1 BC 256 : (2013) 205 DLT 109 : (2014) 1 JCC 11

**Hon'ble Judges :** S.P. Garg, J

**Bench :** Single Bench

**Advocate :** J.K. Singh and Mr. Pankaj Kumar, for the Appellant; Sunita M. Ahuja and Mr. Anil Kant Tripathi, for the Respondent

**Final Decision :** Partly Allowed

## Judgement

S.P. Garg, J.—Mahendra M. Malviya (P-1), Nisha S. Rajput (P-2) and Surendra Singh Rajput (P-3) have preferred the present petition u/s 482 Cr.P.C. for quashing of summoning order dated 01.09.2001 and subsequent proceedings in Criminal Complaint No. 1551/1/10 titled as "Bhagwan Singh T. Rajput v. Mahendra M. Malviya & Ors., filed u/s 138 Negotiable Instruments Act. I have heard the learned counsel for the parties and have examined the file. In a Complaint Case u/s 138 Negotiable Instruments Act filed by respondent No. 2 before Metropolitan Magistrate, Ahmedabad vide order dated 01.09.2001, the petitioners were summoned to face trial. When they did not put appearance despite issuance of process several times, the complainant moved Supreme Court for transfer of proceedings in T.P. (Crl.) No. 355/2007 and on 04.05.2009, after hearing the parties, the case was transferred to Patiala House Courts, Delhi. The process was issued time and again to procure petitioners'' presence but they did not respond and costs Rs. 30,000/- were imposed for their non-appearance while adjourning the matter for framing of notice u/s 251 Cr.P.C. and furnishing of bail bonds. The petitioners opted to challenge summoning order and the proceedings u/s 482 Cr.P.C. in July, 2011 after a gap of ten years. Learned counsel for the petitioners urged that a non-speaking order without recording pre-summoning evidence cannot be sustained. The complainant employed as a peon was provided accommodation in the office premises where he and his family lived. In June, 2001 when P-2 and P-3 were on tour and P-1 was out of station, some cheques signed by P-2 on behalf of various companies were kept in the Almirah to be delivered by the complainant as instructed on phone. The arrangement was made only to meet emergency. The complainant/respondent No. 2 in connivance with political rivals developed mala fide intention and stole the signed cheques and misused for his own benefit for which two FIRs bearing Nos. 16/2001 and 17/2001 were registered against him in which he is evading arrest. The cheques in question bear P-2''s signatures on behalf of various companies and P-1 and P-3 have nothing to do with the cheques. The petition cannot be maintained in the absence of impleadment of company on whose behalf the cheques were issued. Respondent''s counsel urged that after recording his statement on oath, the petitioners were summoned to face proceedings u/s 138 Negotiable Instruments Act. Due to their political influence, they evaded appearance. He further contended that the cheques in question were issued by P-2 as he had rented Gayatri Processors at A/76, Saijpur, Gopalnagar, Shahwadi, Octroi Naka, Pirana Road, Ahmedabad on payment of Rs. 4 lacs p.m. as rent to the petitioners. As he was unable to manage the huge unit due to his ill-health, it was entrusted to P-1 by executing power of attorney on 26.07.1999. The petitioners agreed to the terms and conditions incorporated in the GPA for running the said factory on rent. All the petitioners together agreed to pay and deposit monthly rent of Rs. 4 lacs. The petitioners did not deposit any amount in his account and when confronted, P-2 delivered five cheques of various dates amounting to Rs. 84 lacs. On presentation, the cheques were dishonoured. The petitioners did not make the payment despite issuance of legal notice.

2. From the rival contentions of the parties, it transpires that the controversy requires trial to ascertain and find out as to how and under what circumstances, the cheques in question were issued and delivered by P-2. P-2 has admitted her signatures on the cheques. Conflicting and inconsistent defence, whether the cheques were entrusted to the complainant for delivery to the concerned persons on instructions or stolen by him has been taken. These cheques on presentation in the bank were dishonoured with the remarks ''insufficient funds'' etc. When once the issuance of cheque is validly established, the presumption would arise u/s 139 of the Negotiable Instruments Act in favour of the complainant. Such presumption of law is to be drawn without option where the factual basis for raising the presumption is established. The presumption will live, exist and survive thereafter and shall vanish only when the ''contrary is proved'' by the petitioners. Such presumption can be rebutted by the drawer of the cheque but only during the course of trial and not u/s 482 Cr.P.C. The court exercising inherent powers is not justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. At this

 

stage, the court cannot go into merits and or come to a conclusion that there was no existing debt or liability and quash the complaint. The respondent in his affidavit has clearly disclosed the procedure followed by the courts at Ahmedabad before issuance of process u/s 138 Negotiable Instruments Act.

3. The Negotiable Instruments Act does not envisage any vicarious liability. In the event of the drawer of the cheque being a juristic person, the juristic person as well as the persons-in-charge as responsible to the juristic person for the conduct of the business are liable. It is settled law that only a drawer of the cheque can be prosecuted u/s 138 of the Act on the cheque getting dishonoured. In the instant case, P-1 and P-3 were neither the drawer of the cheques nor it is alleged that they were partner or proprietor of the firm/company or were in any specific capacity responsible for non-payment of cheque amount. The complainant alleged that he purchased the unit from Ramesh C. Shah and Deed of Assignment dated 31.08.1998 in writing was executed (Annexure R/V). Thereafter, when he was unable to manage the huge unit, he executed a power of attorney dated 26.07.1999 (Annexure R/VI) to run it by the petitioners on payment of Rs. 4 lacs as rent. I have gone through the General Power of Attorney dated 26.07.1999. It has been executed in favour of P-1, Accounts Officer, of the unit alone. It does not at all authorises the petitioners to run the said unit on rental basis. There is no mention if the petitioners agreed to pay Rs. 4 lacs p.m. as rent to the complainant to run the unit. It was not revealed whether the unit was to be run by the petitioners as individuals or a company or partnership firm. No rent agreement was executed with the petitioners. The complainant did not place on record any document to show if after the execution of the power of attorney, the petitioners ever carried out any business in the said premises and if so under what name and style and for how much duration. It also does not contain the status of the petitioners in the said concern. The allegations are vague, uncertain and evasive. It is not discernible as to how P-1 and P-3 were liable to be prosecuted u/s 138 Negotiable Instruments Act when there are no allegations in the complaint that they were holding any position in any specific company running the unit and were in-charge of and responsible for its day-to-day affairs. They were not instrumental in the issuance of the cheques in question which bear signatures of P-2 alone on behalf of various companies in different capacities. It is amazing that cheques for different amount were issued in favour of the complainant and one Shanti B. Rajput for Rs. 84 lacs by P-2 on behalf of various companies who had no concern with the unit in question. P-1 and P-3 were not signatories of the cheques in question and the cheques were not delivered by them to the complainant. The complainant did not place on record any official record to infer that the unit was run on rent by the petitioners. The complainant also did not place on record any document to show that Ramesh C. Shah from whom he allegedly purchased the unit was legally authorised as a sole proprietor to sell it. Since P-1 and P-3 were not legally liable for any debt or other liability, in my view, the summoning order to face proceedings u/s 138 Negotiable Instruments Act qua them cannot be sustained.

 

4. In the light of the above discussion, the petition is partly allowed and the summoning order qua P-1 and P-3 is quashed. P-2 alone shall face proceedings u/s 138 Negotiable Instruments Act as she was the signatory to the cheques in question.

5. It is made clear that the observations in the order shall have no impact on merits of the case. All pending applications stand disposed of.