

(2000) 04 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 10457-M of 1999

Meenakshi Gupta

APPELLANT

Vs

Sushma Kedia

RESPONDENT

Date of Decision : 28-04-2000

Acts Referred:

Citation : (2000) 3 AICLR 420 : (2000) 3 CCC 99 : (2000) 3 CivCC 99 : (2002) DCR 170 : (2000) DCR 681 : (2000) 4 ICC 217 : (2002) 1 ISJ 668 : (2000) 3 RCR(Criminal) 119

Hon'ble Judges : K.S.Kumaran, J

Advocate : Mr. S.S. Narula, Advocate. Mr. Puneet Jindal, Advocate., Advocates for appearing Parties

Judgement

K.S. Kumaran, J.

1. Respondent Sushma Kedia lodged a complaint against petitioner Meenakshi Gupta and her husband Naresh Kumar Gupta under Section 138 of the Negotiable Instrument Act and Sections 420/120B I.P.C. The material allegations found therein are as follows :

2. Naresh Kumar Gupta along with Meenakshi Gupta used to sell and purchase shares through Tushar Associates of which Meenakshi Gupta was the proprietor. Both of them induced the complainant to sell her shares promising to give the sale proceeds within a period of one month. Shares of the value of Rs. 4,09,428/ were accordingly given by the complainant to the accused out of which the accused had paid Rs. 1,61,700/ leaving a balance of Rs. 2,47,728/. On demand by the complainant, the accused had given three cheques (1) for Rs. 50,000/ dated 5.4.1997, (2) for Rs. 75,000/ dated 20.4.1997 and (3) Rs. 1,00,000/ dated 5.5.1997 on Canara Bank, Panipat. The cheques were given by both the accused, but signed by the 2nd accused (Meenakshi Gupta). The complainant presented those three cheques for encashment on 9.7.1997 in Punjab National Bank, G.T. Road, Panipat but these cheques were dishonoured by the bank on the ground "funds insufficient" on 10.7.1997. The complainant came to know

that both the accused had already received the sale amount for the shares and have thus cheated the complainant. The complainant gave a registered notice on 17.7.1997 to both the accused which they received on 21.7.1997, but the accused have not paid the amount.

3. The learned C.J.M. by his order dated 5.9.1997 (annexure P4) held that there are sufficient grounds for proceedings against the 2nd accused (petitioner herein) for an offence under Section 138 of the Negotiable Instruments Act and ordered her to be summoned for the hearing on 29.10.1997, but dismissed the complaint as against the 1st accused Naresh Kumar Gupta.

4. Therefore, petitioner Meenakshi Gupta has filed this petition under Section 482 Cr.P.C. for quashing the above said complaint annexure P3 and all the subsequent proceedings arising therefrom including the summoning order annexure P4.

5. According to the learned counsel for the petitioner, respondent Sushma Kedia lodged a complaint with the police on the same allegations against her and her husband Naresh Kumar Gupta, but also stating that signatures of Meenakshi Gupta in the cheques were forged by her husband Naresh Kumar Gupta, on the basis of which F.I.R. No. 629 dated 29.7.1997 was registered under Sections 420, 406, 467, 468 and 471 I.P.C. at Police Station City, Panipat, and the police on investigation found no case against petitioner Meenakshi Gupta, but filed the chargesheet only against the husband Naresh Kumar Gupta. The petitioner also claims that the learned C.J.M. before whom the F.I.R. case is pending, found that there is no report by the banker that the signatures on the cheques were forged and, therefore, only an offence under Section 406 I.P.C. is prima facie made out and accordingly framed a charge under Section 406 I.P.C. against Naresh Kumar Gupta only. Therefore, the claim of the petitioner is that respondent having stated in the F.I.R. that the signatures of the petitioner was forged by her husband Naresh Kumar Gupta, cannot maintain the present complaint under Section 138 of the Negotiable Instruments Act. The petitioner claims that in the complaint, the respondent has changed her stand and has also involved the petitioner, and the complaint in the circumstances of the case is an abuse of process of law.

6. The petitioner also claims that inasmuch as with reference to the same subject matter, the F.I.R. and the complaint have been lodged by the complainant, both of them should be clubbed, tried and disposed of together.

7. The respondent has filed a reply opposing the request of the petitioner for quashing the F.I.R. urging that all the prosecution witnesses have already been examined and the case is at the stage of evidence for the defence and, therefore, the present petition is liable to be dismissed on the ground of delay and laches. The respondent also claims that a reading of the complaint establishes a case for proceeding against the petitioner under Section 138 of the Negotiable Instruments Act. So far as the F.I.R. is concerned, the respondent claims that

Naresh Kumar Gupta informed her over telephone that the three cheques issued to her were in fact signed by him as if the petitioner had signed them and, therefore, she had sent a complaint to the S.S.P. Panipat which resulted in the registration of the F.I.R. No. 692 above mentioned. According to her, it cannot at this stage be stated conclusively that the cheques were not signed by the petitioner.

8. I have heard the counsel for both the sides and perused the records on file.

9. The specific case of the complainant in the complaint is that the petitioner has issued the cheques in question, but when they were presented for payment, they were dishonoured. She has also stated that she has given the statutory notice demanding payment. But the contention of the petitioner is that the respondent has stated in the F.I.R. referred to above that the cheques were forged by Naresh Kumar Gupta, as if they were signed by his wife, the petitioner herein and, therefore, the complaint under Section 138 of the Negotiable Instruments Act is an abuse of process of law and cannot be maintained at all.

10. But the learned counsel for the respondent, on the other hand, contends that what the petitioner now wants is to confront the complainant with her allegations in the FIR, which can be done only before the trial Court, and these allegations in the F.I.R. cannot now be relied upon for quashing the complaint, because, in proceedings under Section 482 Cr.P.C., this Court is not going to find out the truth or otherwise of the allegations found in the complaint, but has to take the allegations found in the complaint as they are, and find out whether on a reading of the complaint, a case is made out against the petitioner for proceeding against her under Section 138 of the Negotiable Instruments Act. The learned counsel for the respondent also contends that provisions of Section 482 Cr.P.C. cannot be used to shortcircuit the proceeding on the ground that there is discrepancy between the FIR and the complaint. He also points out that even in the FIR, no charge has been framed against Naresh Kumar Gupta for forging the cheques, but only a charge under Section 406 I.P.C. has been framed. He, therefore, contends that there are no grounds for quashing the complaint.

11. The learned counsel for the petitioner, of course, relied upon the decision of the Hon'ble Supreme Court in *Madhavrao v. Sambhajirao*, 1988(1) RCR(Cr.) 565 : AIR 1988 SC 709 , wherein it was held that the Court can take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. But, this decision cannot help the petitioner. The Hon'ble Supreme Court held so on the basis that the Court cannot be utilised for an oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue. But, in the case on our hand, it cannot be stated that the chances of conviction are bleak. The Court is yet to consider the discrepancy pointed out by the petitioner and to come to a conclusion. Whether the cheques issued by the respondent are really ones forged by the husband of

the petitioner, is a question of fact which will have to be decided at the time of the trial. Therefore, this Court cannot at the initial stage itself quash the proceedings on the basis of the allegations found in the F.I.R. which the respondent claims were stated by her on the basis of the telephone call from the husband of the petitioner. Whether this explanation is acceptable or not, is also a matter to be seen at the time of the trial. Therefore, I find that this is not a fit case where the complaint in question should be quashed.

12. The other contention of the learned counsel for the petitioner is that both the complaint and the F.I.R. being with reference to the same subject matter, the complaint and the F.I.R. should be clubbed together and tried jointly.

13. But, in my view, it is only proper that the F.I.R. and the complaint are tried and disposed of separately, but simultaneously by the same Judicial Officer. Both of them should be tried by the same Judicial Officer simultaneously and disposed of simultaneously, but by different judgments.

14. Accordingly, this petition is allowed in part directing that the case arising from the F.I.R. No. 692 dated 29.7.1997 of Police Station City, Panipat and also the complaint titled Sushma Kedia v. Naresh Kumar Gupta and another under Section 138 of the Negotiable Instruments Act should be tried by the same Judicial Officer of competent jurisdiction separately and disposed of also separately, but at the same time. If any orders are necessary for placing these two cases before the same Judicial Officer, the concerned Sessions Judge will pass appropriate orders regarding the same.

15. But so far as the prayer for quashing the complaint is concerned, this petition is dismissed. Forward copy of this order to the concerned Sessions Judge.