

(2012) 07 DEL CK 0221
In the Delhi High Court
Case No : Criminal M.C. 1749 of 2012

Meera Gupta and Others

APPELLANT

Vs

Govt of Nctd and Another

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 118, 138, 139

Citation : (2013) ALLMR(Cri) 86 : (2013) 1 Crimes 481

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : R. Rajappan with Ms. Rajasree Ajay, for the Appellant; Jasbir Kaur, APP for State, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J

Crl. M.A. 6108//2012 in Crl. M.C. 1749/2012

Allowed, subject to all just exceptions.

Crl. M.C. 1749/2012 & Crl. M.A. 6109/2012

1. Present petition has been filed u/s 482 of the Code of Criminal Procedure, 1973 read with Article 227 of the Constitution of India for setting aside the order dated 1st February, 2012 passed by the Metropolitan Magistrate, Karkardooma Courts, New Delhi as well as Mr. R. Rajappan, learned counsel for the petitioners states that the present case is not covered u/s 138 of NI Act as neither the alleged cheques were drawn on any account maintained by the company nor the same were dishonoured on account of "insufficient funds" or "exceeding the amount arranged for". He further states that though the present petitioners are the Directors of the company, but they are not authorized to sign cheques. He also states that there is no averment against the petitioners in the complaint. In

this connection, he relies upon the judgment of the Supreme Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr., 2005 VIII AD (SC) 107.

2. Having heard the learned counsel for petitioners and having perused the complaint, this Court is of the view that the issues raised in the present petition are purely factual and the petitioners' versions cannot be accepted at this stage. For instance, the fact that the petitioners are not authorised to sign the cheques, has to be proved by them in trial.

3. Further, the reliance placed by learned counsel for the petitioners on S.M.S. Pharmaceuticals Ltd. (supra) is misplaced inasmuch as there is sufficient averment against the petitioners/accused persons in the complaint wherein it is stated as under:

2. That as part payment towards the said liability accused no. 1 company acting through accused no. 2 to 6 issued, under its stamp and signature of accused no. 2, the cheque no. 988396 dated 18-07-2011, for an amount of Rs. 5,00,000/- drawn on Syndicate Bank, Pusa Campus, IARI, New Delhi-110012, in favour of the complainant, with the assurance and undertaking that the same shall be duly encashed on presentation...

4. Moreover, if the petitioners' version is to be believed, then the accused nos. 2 and 3 would have to be held guilty of fraud and cheating. It would also have to be seen as to whether the said accused persons acted in conspiracy with the petitioners or not. These facts can be examined by the trial court only after considering the evidence

5. This Court is also of the view that at the initial stage the Court taking cognizance of the complaint u/s 138 of the NI Act is only required to satisfy itself as to whether a prima facie case is made out under the said provision. In the present case, the fact of the matter is that a cheque was issued to the complainant bearing the stamp of the company, which got dishonoured.

6. It is also well settled that cheques dishonoured for reasons other than "insufficient funds" or "exceeding the amount arranged for" are covered within the ambit of Section 138 of NI Act. In fact, the Supreme Court in M/S Modi Cements Limited Vs. Shri Kuchil Kumar Nandi, has held that even if stop payment instructions had issued by the drawer prior to the encashment of the cheque, then also Section 138 of NI Act would be attracted.

7. This Court is further of the opinion that at this stage presumption of dishonour of cheques for insufficiency of funds under Sections 118 and 139 of the NI Act would have to be drawn against the accused persons. Of course, the presumption is a rebuttable one prove to the contrary. Consequently, present petition and application are dismissed but with no order as to costs.