
(2009) 08 BOM CK 0042
In the Bombay High Court
Case No : Criminal Appeal No. 60 of 2009

Mr. Rajan Rane Proprietor "SAI-NET"	APPELLANT
Vs	
Seagull Threads India Ltd.	RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2009) 08 BOM CK 0042

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : D. Pangam, for the Appellant; Sudin M. Usgaonkar, for the Respondent

Final Decision : Allowed

Judgement

N.A. Britto, J.—Heard Shri Pangam, the Learned Counsel on behalf of the appellant/complainant and Shri Sudin M. Usgaonkar the Learned Counsel on behalf of respondent/accused.

2. This is a complainant's appeal and is directed against Judgment dated 12.2.09 of the Learned J.M.F.C, Panaji, acquitting the accused u/s 138 of the Negotiable Instruments Act, 1881.

3. There is no dispute that the complainant is a proprietor of a business known as Sai-Net and the accused is a company and only the company was prosecuted by the said complainant. There is also no dispute that the complainant used to supply to the accused-company stationery items against various invoices from time to time. The subject matter of the dispute between both the parties is the dishonour of a cheque dated 26.5.05 for Rs. 25,144/-. The said cheque was admittedly issued on behalf of the accused in favour of the complainant and it was dishonoured on 31.5.05 because of stop payment instructions given by the accused. There is no dispute that on the next day i.e. 27.5.05 on behalf of the accused a letter was written to the complainant stating that the subject cheque

was forcibly taken by the complainant on 26.5.05 at 9 pm in front of ICICI Bank Limited, Panaji, from Shri Raju Nadar and that as per the bills the balance amount was not that much and therefore the complainant ought to come to the factory of the accused alongwith the subject cheque for settlement of account and it was further stated that whatever amount was due, the accused would settle the same. It may be noted that this letter was written on behalf of the accused company by its Manager.

4. The complainant wrote back to the accused company letter dated 31.5.05 giving the details of invoices and showing how the amount of Rs. 25,144/- was due and payable to the complainant. It was also stated that the complainant had come to know that the accused had stopped the payment of the subject cheque, after issuing it, and had opted to write the said letter dated 27.5.05. by making false allegations in order to delay the payment which was totally unbusiness like. The accused was requested to make the payment of the said amount of Rs. 25,144/immediately.

5. On behalf of the accused by letter dated 30.5.05 a cheque of Rs. 10,000/- dated 28.5.05 was sent and it was stated in the said letter that one Sulaksha Naik on behalf of the company had a talk with the complainant. It was further stated that the said cheque dated 28.5.05 for Rs. 10,000/- was against the earlier cheque dated 26.5.05 for Rs. 25,144/in part payment and the complainant was further informed that the complainant, for the remaining payment, should come alongwith the statement and take the balance payment.

6. By another letter dated 3.6.05 written on behalf of the accused the allegation that the cheque was forcefully taken was reiterated. It was further stated that what was stated in letter dated 3.6.05 was not correct and the complainant was further requested to come to the factory of the accused personally, alongwith delivery challans and settle the account and it was further stated that after settling the account, whatever balance was due, the complainant could collect the same. The complainant by letter dated 14.6.05 reiterated that whatever clarifications were required were given by the complainant's letters dated 31.5.05 and 6.6.05 and it was further stated that the insistence of the accused that the complainant should come to the factory was not appreciated particularly when full details of the jobs done were given in the complainant's letter dated 31.5.05 and therefore the accused was again requested to settle the account by remitting Rs. 15,144/- as explained to the accused by complainant's letter dated 6.6.05. By another letter dated 21.7.05 on behalf of the accused another sum of Rs. 1,000/- was paid by cheque dated 21.7.05 and it was again stated that the next payment would be made only after the complainant came to the factory of the accused and settled the account.

7. The complainant therefore sent a legal notice dated 28.6.05 demanding a sum of Rs. 15,144/-, deducting the sum of Rs. 10,000/- sent by cheque dated 28.5.2005, sent by letter dated 6.6.05. The notice was replied to by the accused, reiterating the earlier stand that the complainant should come to the factory of

the accused and settle the account. The liability as such was not disputed. As the notice was not complied, the complaint came to be filed on or about 29.7.05. In between another sum of Rs. 1,000/- was paid by the accused by cheque dated 21.7.05, and, as on date according to the complainant an amount of Rs. 14,144/- was due and payable by the accused. It also may be stated, that before the Learned trial Court by application dated 17.8.2007, on behalf of the accused, it was stated that the accused without prejudice to defend the case on merits was ready and willing to pay the balance amount of Rs. 14,144/- as claimed by the complainant. However that amount was not paid nor deposited before the Learned Magistrate.

8. The complainant examined himself in support of his case. No one was examined on behalf of the accused, not even the Manager who wrote the said letters from time to time or the Director, the said Nadar from whose possession the subject cheque was stated to have been taken by force.

9. The Learned Magistrate by Judgment dated 12.2.2009 acquitted the accused and one of the reasons given in support of the acquittal is that the notice fell short of the legal requirements. One fails to understand as to how the said notice could have fallen short of the legal requirements when as on the date of issuing the legal notice the accused had owed to the complainant only a sum of Rs. 15,144/-, the accused having paid to the complainant a sum of Rs. 10,000/- after the cheque of Rs. 25,144/- was dishonoured on or about 31.5.05.

10. Be that as it may, Shri Pangam, Learned Counsel on behalf of the complainant submits that the details of the invoices were given by the complainant in the complainant's letter dated 31.5.05 which were never disputed by the accused. Counsel further submits that the said invoices/delivery challans were also produced by the complainant in the course of the trial regarding which there was no dispute raised by the accused. Learned Counsel, therefore, submits that the complainant had proved that the accused had a liability towards the complainant in the sum of Rs. 15,144/- and after a sum of Rs. 10,000/- was paid, and on that count the notice was restricted to the said sum of Rs. 15,144/-. Learned Counsel further submits that in case the subject cheque was forcibly taken by the complainant from the said Nadar, the Director of the accused company, atleast a complaint would have been filed to the police and the said stance was taken on behalf of the accused, after the cheque was given, only to delay the amount payable to the complainant. Learned Counsel further submits that the accused never disputed the actual liability of the accused towards the complainant except to say that the complainant should come to the factory of the accused and settle the payment after finalising the account.

11. On the other hand, Shri Usgaonkar, the Learned Counsel on behalf of the accused submits that after the complainant accepted the cheque dated 28.5.05 for Rs. 10,000/- sent by letter dated 30.5.05, a new transaction took place between the complainant and the accused and as such the accused had no liability towards the earlier cheque dated 26.5.05 for Rs. 25,144/-. Counsel also

submits that with the acceptance of payment of Rs. 10,000/- by the complainant the liability on the cheque for Rs. 25,144/- got dissolved and a new liability took place. Counsel further submits that by letter dated 30.5.05, after sending cheque for Rs. 10,000/- the complainant was specifically told that the said cheque of Rs. 10,000/- was given in part payment and against the cheque dated 26.5.05 and was further informed that the complainant should come for remaining payment alongwith the statement of account and take the balance payment. The contention of Shri Usgaonkar therefore is that the liability which the accused had towards the cheque dated 26.5.05 for Rs. 25,144/- got wiped out after the complainant accepted cheque dated 28.5.05 for Rs. 10,000/-. Counsel further submits that there was no cheque given by the accused for Rs. 15,144/- for an offence to be committed under the Act. Learned Counsel further submits that the liability in the sum of Rs. 15,144/- is a new liability and therefore the notice could not have been linked to the cheque issued on 26.5.05 for Rs. 25,144/-.

12. As already stated, there is no dispute that the subject cheque for Rs. 25,144/- was given on behalf of the accused to the complainant and therefore the complainant had in his favour the presumptions available to him under the Act that the cheque was issued towards the liability of the accused towards the complainant, towards the supply made by the complainant to the accused. The stand taken by the accused that it was forcefully taken by the complainant was not proved. Independently also, the complainant had proved the liability of the accused to the said amount of Rs. 25,144/- first, by giving the details of invoices cum delivery challans of the supplies made to the accused by letter dated 31.5.05 which were in fact not contested on behalf of the accused stating that any of the supplies delivered under the said invoices were in fact not delivered to the accused. The complainant had also in his evidence produced the said invoices/ challans and regarding which the accused had raised no whisper in the cross-examination. The complainant had thus sufficiently proved, apart from the presumption available to him that the accused had a liability towards the complainant in the sum of Rs. 25,144/- towards supplies made to the accused. There is no dispute that the accused did pay a sum of Rs. 10,000/- after cheque for Rs. 25,144/- was dishonoured. The complainant, therefore, honestly could not have demanded from the accused an amount which was not due to the complainant, on the subject cheque since an amount of Rs. 10,000/- was subsequently paid. Admittedly, the subject cheque was dishonoured and the demand notice was not complied. The accused could have avoided the commission of offence u/s 138 of the Act only by complying with the notice and by paying the balance due to the complainant. I am unable to accept any of the submissions made by Shri Usgaonkar, Learned Counsel on behalf of the accused. What was stated by the accused in letter dated 27.5.05 was never accepted by the complainant. The said letter appears to have been written only to gain time. Cheque for Rs. 10,000/- dated 28.5.05 was sent by letter dated 30.5.05 for part payment and therefore the complainant was free to encash it towards the liability of the accused in the sum of Rs. 25,144/- and therefore there was no question of

the liability of the accused being wiped off in the sum of Rs. 25,144/-. Even in this letter dated 30.5.05 the accused did not deny the liability for Rs. 25,144/- but only told the complainant to come with his statement to take balance payment. This is a clear case where the subject cheque of Rs. 25,144/- was issued by and on behalf of the accused to the complainant and the complainant therefore had all the presumptions in his favour that it was issued towards the liability which the accused was required to meet towards the complainant. Independently, of the said presumption, the complainant had also proved first by giving details of the supplies made to the accused, by letter dated 31.5.05 and thereafter in the course of the trial by producing the respective invoices/delivery challans, regarding which the accused raised no dispute. Obviously, the accused did not comply with the demand notice within the stipulated period and although the subject cheque was for Rs. 25,144/-, the demand notice could not have been for that amount because in between the accused had paid a sum of Rs. 10,000/- and a sum of Rs. 1,000/- much after the said statutory demand notice. The accused having failed to pay the balance amount due to the complainant, as stipulated in the notice, within the stipulated period of notice, in my view, the accused did commit an offence punishable u/s 138 of the Act. In my view, the notice could not have fallen short of any legal requirement, as noted by the Learned Magistrate because after the dishonour of cheque of Rs. 25,144/- a sum of Rs. 10,000/- was paid by the accused and in fact it might have fallen short of legal requirement in case the complainant had persisted in demanding the sum of Rs. 25,144/- when it was not due to him. The legal notice did not fall short of any of the legal requirements.

13. The accused having failed to comply the demand notice and pay the balance amount due to the complainant, the accused did commit an offence u/s 138 of the Act. As a result, the appeal deserves to succeed and the impugned order dated 12.2.2009 is hereby set aside and consequently the accused is convicted u/s 138 of the Act.

14. As already stated, the accused is a company and none of the Directors have been made as accused. The accused can be punished only by imposing a fine and/or by ordering compensation to be paid to the complainant. Shri Usgaonkar on behalf of the accused submits that the offer of the accused made by application dated on 17.8.07 may be taken into consideration while awarding compensation to the complainant. Shri Pangam submits that in case the said offer was bonafide nothing prevented the accused to deposit the said amount before the Court and therefore the offer made by the accused was not at all bonafide.

15. The complainant has been deprived of Rs. 14,144/- for a considerable period of time and not only that the complainant was further made to prosecute his case. The offer made on behalf of the accused, in my view, cannot be taken into consideration because the money was in the hands of the accused and it must have certainly made use of it by depriving the complainant of the same. Shri

Pangam on behalf of the complainant does not insist that any fine be imposed on the accused but he submits that the complainant be suitably compensated. Considering the facts and circumstances of the case, the accused is hereby ordered to pay to the complainant compensation of Rs. 20,000/- within a period of 30 days, failing which coercive steps will be taken to recover the same.