(2013) 10 KAR CK 0268

In the Karnataka High Court

Case No : Criminal P. No. 3879 of 2013

Mrs. Avneet Bedi — APPELLANT

Vs

Mr. Navin Malik — RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2013) 10 KAR CK 0268

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : Srivatsa for Sri Syed Khamruddin, for the Appellant; Tomy Sebastian, Learned Counsel for Sri Melanie Sebastian in Crl. P. No. 3879/2013 and for Sri Reny Sebastian in Crl. P. No. 3880/2013, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Nagamohan Das, J.—In these three petitions the petitioner has prayed for quashing the proceedings in C.C. No. 19033/2011, 21873/2011 and 21872/2011 on the file of XIII Additional Chief Metropolitan Magistrate, Bangalore City. In all these three petitions the petitioner is common and the respondents are different. The facts and law involved in all the three petitions are same. Hence, by a common order these three petitions are heard and disposed.

2. Petitioner, her husband-H.S. Bedi and her daughter-Bani Bedi are the Director, Managing Director and Director respectively of a company called IDEB Buildcon Pvt. Ltd. According to the respondents the petitioner, her husband and daughter induced them to invest huge sums of money to an extent of Rs. 7.00 crores plus and guaranteed monthly returns to the tune of Rs. 8.89 lakhs.

Thereafter the petitioner, her husband, her daughter and their-company avoided their liability with a criminal intention to cheat the respondents. In the circumstances the respondents lodged complaint with the police and the same came to be registered in crime No. 215/2010 for the offences punishable u/s 406, 420 IPC. Aggrieved by this registration of criminal case against the petitioner and her family members, they approached this Court in W.P. Nos. 31454-456/2010 to quash the proceedings in crime No. 215/2010. During the pendency of W.P. Nos. 31454-456/2010 there came to be a settlement between the parties as per settlement deed dated 11.11.2010. In terms of this settlement deed six post dated cheques were issued by the petitioner, her family members, and their company towards discharge of their liability in favour of respondents. Accordingly, the counsel for the petitioner and respondents in W.P. Nos. 31454-456/2010 filed separate memos reporting settlement. This Court by accepting the memos filed by both the parties disposed the writ petitions vide order dated 05.01.2011 with an observation as under:

3. It is seen from the petition averments and the pleadings that the controversy leading to these writ petitions is on account of the omission on the part of the petitioners in not settling the dues payable to respondents 5, 6 and 7. In view of the subsequent developments and in the light of the memo filed by respondents 5, 6 and 7 before this Court on 30.11.2010 reporting that cheques have been issued in their favour have been issued in their favour by the petitioner-Company IDEB Buildcon Private Limited and that subject to the said cheques being honoured, the writ petition may be dismissed. I do not find any need to proceed with these writ petitions nor is there any need for the investigating agency to proceed with the investigation of the offence alleged. Hence, in the light of the memo filed by respondents 5, 6 and 7 on 30.11.2010 and taking note of the issued cheques by the Company in favour of respondents 5, 6 and 7, these writ petitions are disposed of making it clear that the investigating agency shall take note of this order and close the investigation to avoid wastage of public time.

4. It would be however open to respondents 5, 6 and 7 to initiate appropriate action in accordance with law against the petitioners or the IDEB Buildcon Private Limited if the cheques are not honoured.

5. In view of the order passed in the main matter, Misc. W. 11208/2010 filed for vacating the interim order does not survive for consideration. Accordingly, the same is disposed of as infructuous.

(Underlining is by me)

3. After disposal of W.P. Nos. 31454-456/2010 the respondents presented the cheques for encashment and the same came to be dishonoured with a shara ''account blocked''. Consequently the respondents filed separate private complaints against the petitioner, her husband, her daughter and the Company in PCR No. 10988/2011, 10989/2011 and 10990/2011 for the offences punishable u/s 138 of Negotiable Instruments Act (for short ''the Act'') on the file of trial Court. The trial Court had taken cognizance of the offence in C.C. Nos. 21873/2011, 19033/2011 and 21872/2011. The petitioner and other accused entered appearance before the trial Court and are contesting the proceedings.

The trial Court recorded examination in chief of one of the respondents on 30.01.2012 and 01.02.2012 and now the matter is set down for cross-examination of P.W. 1. At this stage, the petitioner being aggrieved by the initiation of proceedings against her, in C.C. Nos. 21873/2011, 19033/2011 and 21872/2011 is before this Court.

4. Heard arguments on both the side and perused the entire petition papers.

5. This Court in W.P. Nos. 31454-456/2010 quashed the criminal proceedings against the petitioner, her husband and daughter in crime No. 215/2010 by accepting separate memos filed by both the parties reporting that they have settled the matter as per the settlement deed dated 11.11.2010. Thus the petitioner is the beneficiary of quashing of the proceedings in crime No. 215/2010. The cheques involved in these cases are part of settlement dated 11.11.2010. This Court by considering the settlement and the ''issuance of cheques reserved liberty to the respondents to proceed against the petitioner and the company in the event cheques are not honoured. Therefore proceedings initiated are in accordance with-law.

6. Learned counsel for the petitioner contends that in the complaints filed by the respondents except stating that this petitioner is one of the Director and actively involved in the day-to-day affairs of the company, especially in finance, no specific details are given with regard to the role played/by this petitioner in the affairs of the company. It is not in dispute that the respondents initiated criminal proceedings against the petitioner and others in crime No. 215/2010 for the offences punishable u/s 406 and 420 IPC. Further it is not in dispute that this Court in W.P. Nos. 31454-456/2010 quashed the criminal proceedings by accepting the settlement between the parties as per settlement deed dated 11.11.2010. The cheques in question are an outcome of the settlement deed. It is further stated that this petitioner as Director played an important role specially in the finance of accused company. This material on record specifies the role played by the petitioner and the benefit that she has derived. Therefore the proceedings against the petitioner cannot be quashed on the ground that no specific details are pleaded in the complaints with regard to the role played by this petitioner.

7. The judgment relied on by the learned, counsel for the petitioner in the case of DCM Financial Services Ltd. Vs. J.N. Sareen and Another, has no application to the facts on hand. The facts involved in DCM Financial Services case are entirely different from the facts involved in the present case. In the present case the petitioner is the beneficiary of the order of this Court in W.P. Nos. 31454-456/2010. This Court in those writ petitions reserved liberty to the respondents to initiate proceedings in accordance with law against the petitioner herein, her husband, her daughter and the company if the cheques are not honoured.

Therefore the facts in the present case are entirely different from the facts in the

DCM Financial Services case.

8. Secondly it is contended that the cheques are dishonoured with shara ''account blocked'' and therefore the same do not constitute an offence u/s 138 of the Act. It is contended that only if the cheques is dishonoured with a remark as insufficient funds or it exceeds the amount arranged to be paid from that account, the same will constitute an offence u/s 138 of the Act. But in the instant case the cheque is returned to the respondents with a remark as account blocked'' and therefore on this ground the proceedings are liable to be quashed. I decline to accept this contention of the learned counsel for the petitioner.

9. Admittedly on the date of return of the cheques the amount mentioned in the cheques was not available in the account. On the other hand the endorsement issued by the Bank specifies that the outstanding balance was only Rs. 38,000/-. Though in the endorsement issued by the Bank it is stated as account blocked, on the face of it, there was insufficient fund in the account to honour the cheques issued to the respondents. Further at whose instance and for what reason the account was blocked is not forthcoming. Even if the account was blocked for any reason, then there was no legal impediment for the petitioner to pay the amount covered under the cheque to the respondents. It is not the case of petitioner that she had sufficient funds with her to honour the cheques and for the reason that the account was blocked, she was prevented from depositing the amount to bank account. Therefore, at this stage, I decline to accept the contention the learned counsel for the petitioner that in view of the remark contained in the endorsement issued by the Bank the same do not constitute an offence u/s 138 of the Act.

10. The cheques in question are issued under the settlement deed dated 11.11.2010, the cheques are dishonoured in the month of March 2011, notices of dishonour were issued in the month of April 2011, and the complaints are filed on 10.05.2011. Now the trial Court recorded the examination in chief of P.W. 1 and the matter is set down for cross-examination. At this stage this is not a fit case for exercise of power u/s 482 Cr.P.C. For the reasons stated above, the petitions are hereby dismissed.