

(2013) 04 P&H CK 0144

In the Punjab And Haryana At Chandigarh

Case No : C.R.M. No. M-4758 of 2010 (O and M)

M/s. Aura Institutions Pvt. Ltd. and Others

APPELLANT

Vs

M/s. Starex Education Society (Regd.)

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, 482

Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142

Prevention of Food Adulteration Act, 1954 — Section 16, 7

Citation : (2013) 3 RCR(Criminal) 562

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : Ashish Chopra, for the Appellant; Sunil Panwar, for the Respondent

Final Decision : Dismissed

Judgement

Jitendra Chauhan, J.—The present petition u/s 482 of the Code of Criminal Procedure (for short the Code) is for quashing of the complaint dated 22.08.2009 (Annexure-P/5), and all subsequent proceedings arising therefrom including the summoning order dated 22.08.2009 (Annexure P/6) passed by the Judicial Magistrate, 1st Class, Gurgaon whereby the petitioners have been summoned to face trial u/s 138 of the Negotiable Instruments Act, 1881 (for short the Act). Facts in brief, as mentioned in the petition, are that petitioner No. 1 M/s Aura Institutions Pvt. Ltd. is authorized representative of Anna University, Coimbatore for selection of parties for setting up of campus education centers all over India under the Public-Private-Partnership (PPP) model. The respondent represented itself to be an educational society for considerable repute having infrastructure for setting up Engineering and MBA colleges. Petitioner No. 1 agreed to get affiliation to the respondent on the aforesaid representation. A memorandum of understanding (MoU) dated 10.03.2009 (Annexure P/1) was entered between the petitioner-company and the respondent in Delhi for getting the respondent affiliated to Anna University, Coimbatore for Engineering and MBA programme. The MoU stipulated payment of Rs. 15,00,000/- towards the affiliation fee to the

Anna University, Coimbatore which was paid by the respondent to the petitioner company. It was also stated that the petitioner company has made payment of Rs. 15,00,000/- to the Anna University, Coimbatore, as duly acknowledged by the University vide its letter dated 24.04.2009 (Annexure P/2). (However, the respondent has claimed the letter Annexure-P/2 to be a forged document, and has annexed a true copy of the. letter Annexure-P/2 as Annexure-R/1 wherein there is no reference of receipt of Rs. 15,00,000/- by the Anna University, Coimbatore. This fact remains unchallenged). As the respondent wanted some surety, petitioner No. 2-Chairman of the petitioner No. 1-company, gave surety cheque No. 559866 dated 30.06.2009 drawn on City Bank Delhi for the amount of Rs. 15,00,000/-. As per the MoU in case the respondent's application for affiliation got rejected in spite of complying with all requirements, the cheque was to be got encashed. The respondent vide its letter dated 27.06.2009 (Annexure P/3) informed petitioner No. 2, Chairman of the petitioner company that there had been inordinate delay in inspection of their campus by the Inspection Committee of Anna University and that it was very late for starting the courses. It had been mutually agreed to terminate the MoU. Hence, the cheque dated 30.06.2009 drawn on City Bank New Delhi for Rs. 15,00,000/- was going to be deposited in the respondent's account. Petitioner No. 1 Company vide its letter dated 01.07.2009 (Annexure P/4) informed the respondent that instructions for stop payment of the cheque dated 30.06.2009 had been issued to the bank, as the expenses that had been incurred by the petitioner-company were yet to be settled. Accordingly, the cheque dated 30.06.2009, which was deposited by the respondent with its banker namely Syndicate Bank, Manesar Branch, Gurgaon was dishonoured and returned unpaid with the remarks "payment stopped by drawer" vide memo dated 02.07.2009. The respondent issued demand notice on 10.07.2009 to the petitioners calling upon them to pay the amount of Rs. 15,00,000/- within fifteen days of the receipt of said notice. Despite receipt of the notice, the petitioners did not pay any amount to the respondent. Thereafter, the respondent filed complaint dated 22.08.2009 (Annexure P/5) under Sections 138/ 141/ 142 of the Act, before the Judicial Magistrate, 1st Class, Gurgaon. To substantiate the facts stated in the complaint, the complainant (CW 1) appeared as a witness, and further placed on record, the cheque, memo. legal notice and postal receipts. On perusal of the documents placed on the record and in the light of the oral evidence of the complainant, the Judicial Magistrate 1st Class, Gurgaon summoned the petitioners vide order 22.08.2009 (Annexure P/6).

2. Learned counsel for the petitioners has assailed the impugned summoning order by arguing that the cheque dated 30.06.2009, which is said to have been dishonoured, was issued as security in terms of the MoU (Annexure P/1), and accordingly the same was not issued for discharge of the debt or other liability within the purview of Section 138 of the Act. He has also argued that the Judicial Magistrate 1st Class, Gurgaon, has not applied his mind to the facts of the case, nor has he examined the nature of the allegations made in the complaint and the

evidence and has passed the impugned summoning order in a casual manner. He states that the summoning order dated 22.8.2009 is liable to be quashed. In support of his submissions, he relies upon Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, , M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, , Sudhir Kumar Bhalla Vs. Jagdish Chand, etc. etc., and the judgments of this Court passed in CRM-M No. 14107 of 2011 titled Dalip Kumar Sareen & Ors. v. State of Punjab & Anr. and CRM-M No. 24079 of 2011 titled Pankaj Badlani & Ors. v. M/s Nectar Life sciences Ltd. & Ors.

3. On the other hand, Learned counsel for the respondent has argued that the summoning order dated 22.8.2009 has been passed by the trial court after judicious application of mind to all facts of the case and after going through the evidence on record. He has argued that the stand being now taken by the petitioners is contradictory to their stand taken in letter dated 01.07.2009 (Annexure P-4) and that defence of the accused is a matter of trial. Learned counsel also submits that the question as to whether, on the date of issuance, and at the time of its presentation and dishonour, the cheque in dispute was merely in the nature of security or for the discharge of a legally enforceable liability, can be answered only after conclusion of evidence during trial and not at preliminary stage, in exercise of jurisdiction u/s 482 of the Code.

4. I have heard the Leaner counsel for the parties and have carefully perused the case file.

5. Reliance was placed by the Learned counsel on the judgments of the Hon''ble Supreme Court in M.S. Narayana Menon case (supra) and Sudhir Kumar Bhalla v. Jagdish Chand and Others (supra) to contend that as the cheque in question was issued for security under the MoU and not to discharge any liability, the provisions of Section 138 of the Act would not apply against the petitioners. The fact as to whether the cheque was for discharge of a legal liability or as a security can only be ascertained upon leading evidence by the parties during trial. This Court, exercising the jurisdiction u/s 482 of the Code is not the appropriate forum to decide the issue merely on the basis of affidavits filed in the petition. In both the judgments, referred to above, the parties had led their evidence before the trial court, and then filed appeals and SLP before the Hon''ble Supreme Court, where upon the judgments were rendered on considering the issues raised and evidence led by the parties during trial. Undisputedly, in the case at hand, the trial is yet to take place and at this stage going into the question of ascertaining whether the cheque in question was merely a security or towards discharge of a legally enforceable liability, would amount to prejudging the issue, which this court is not inclined to do.

6. The judgment in Pepsi Foods Ltd. & Another case (supra), relied upon by the learned counsel for the petitioner, was concerning a case wherein quashing of the complaint filed u/s 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 was sought by the appellants therein. While examining the summoning order in the case, in the light of provisions of the 1954 Act, the Hon''ble Supreme

Court held that the order summoning an accused u/s 204 of the Code must reflect that the Magistrate had applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to examine the nature of the allegations made in the complaint and the evidence in support thereof and decide whether that would be sufficient for the complainant to succeed in bringing home the charge to the accused. The other two judgments of this Court, referred to by the learned counsel for the petitioners, primarily rely upon the judgment in Pepsi Foods Ltd. & Another case (supra). This judgment does not help the argument put forth on behalf of the petitioners because a perusal of the impugned summoning order dated 22.08.2009 (Annexure P/6) shows that the Magistrate has applied his mind to the facts of the case and the law applicable thereto. He has carefully examined the nature of allegations in the light of the testimony of the complainant (CW 1) and the documents placed on record in the form of the cheque, bank memo, legal notice, postal receipts, etc. It has also been considered, as the order shows, that the complainant/respondent presented the cheque in question to the banker of the accused in time and further issued notice to the accused/petitioner within the stipulated period from the date of receipt of the communication about dishonour of the cheque, still the accused/petitioner failed to make the payment. These facts and the evidence led by the respondent, raised the statutory presumptions against the accused u/s 138 of the Act and, therefore, the Magistrate rightly concluded that there were sufficient grounds to proceed against the accused/petitioners and passed the summoning order. This Court finds no illegality or irregularity in the order dated 22.8.2009 (Annexure P-6) passed by the trial court. The second argument of the learned counsel for the petitioner is also, accordingly, rejected.

7. This Court has consistently held that in exercise of powers u/s 482 of the Code, a summoning order issued u/s 138 of the Act cannot be quashed on the ground that the cheque in question was issued as a "security cheque" and not in discharge of any liability or debt. In Perfect Computer Network and Another Vs. I.T. World, , this court observed as under:

11. The second argument of learned counsel for the petitioners was that the cheque was towards security and therefore, the petition u/s 138 of the Negotiable Instruments Act is not maintainable also has no merit. The fact as to whether the said amount is towards security or not, is a matter of evidence to be led at the time of trial and cannot be given into u/s 482 of the Criminal Procedure Code.

8. In M/s Mahaplasto Ltd. Vs. M/s Bushan Steels and Strips Ltd. this court observed as under:

4. There is no dispute of the fact that the petitioners have given a cheque which has been bounced on the instructions of the drawer of the cheque to stop payment. At this stage I do not want to go into the various contentions raised by the parties since the same will amount to pre-judging the matter. There being no evidence on record, any observation made by me in regard to the question

whether the issuance of cheque as a security amounts to liability or not will prejudice the parties. Prima facie I am of the opinion that even if the cheque is issued as security or in discharge of liability of any other person, it amounts to a liability which has been undertaken by the drawer of the cheque. Since the decision on the point raised by the learned counsel for the petitioners depends on the evidence to be adduced by the complainant and petitioners, this Court will not be in a position to quash the complaint. To quash the complaint, one has to look into the averments contained in the complaint. The averments made in the complaint clearly show that the cheque in question has been issued only for discharging the liability. It is also not for me to go into the question whether there was any settlement.

9. The Delhi High Court, in *Mekservers Pvt. Ltd. and Another Vs. Hcl Infosystems Ltd.*, observed as under:

4. It may be noted that the contention of the Petitioner whether the cheque was not issued in discharge of a legal liability and was issued as a security can be ascertained only after the parties lead their evidence. This issue cannot be decided in a petition u/s 482 Criminal Procedure Code merely on the basis of the affidavits filed by the petitioners. Both the respondent and the petitioners would have to lead evidence to show their case before the Id. Trial Court. Needless to say that the respondent in his complaint has asserted that the petitioners tendered to the respondent cheque bearing No. 213244 dated 17th February, 2010 for a sum of Rs. 3,76,986/- drawn on Union Bank of India, Bhubneshwar at the registered office situated at Delhi in discharge of part liability. Since it is the assertion of the respondent that the cheque was issued in discharge of the liability, the respondent is entitled to lead evidence in this regard during trial. Reliance of the petitioner on *Ms. Narayana Menon and Venkatesh Bhat (supra)* is misconceived, as the two decisions were rendered after the complaints were decided by the Id. Trial Court and the matters were taken in Special Leave Petitions on dismissal of the appeals and revision petitions. Thus, on appreciation of evidence led the Courts came to the conclusion that the cheques were not issued in discharge of legal liability but as security. Consequently, the petition and application are dismissed.

In view of the aforementioned factual and legal position, I do not find any grounds to exercise the inherent extra-ordinary jurisdiction u/s 482 of the Code to quash the criminal complaint (Annexure P/5) and the summoning order (Annexure P/6). This petition is, accordingly, dismissed. Keeping in view the fact that trial of the complaint case, which pertains to the year 2009, has remained stayed on account of interim order passed by this Court, it is deemed appropriate to direct the Id. Judicial Magistrate, 1st Class, Gurgaon, to conclude the trial expeditiously, preferably within a period of one year from the date of receipt of a copy of this order.