

(2012) 01 P&H CK 0209

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-9167 of 2005

M/s Auto Pins (India) Limited and Others

APPELLANT

Vs

Union Territory, Chandigarh and Another

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 254, 482

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

Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2012) 1 BC 639 : (2012) 1 RCR(Criminal) 880

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—The crux of the facts, which needs a necessary mention for the limited purpose of deciding the core controversy, involved in the instant petition and emanating from the record, is that the complainant M/s Modern Steels Limited-respondent No.2 (for brevity "the complainant") filed a criminal complaint (Annexure P10) against the petitioners M/s Auto Pins (India) Limited and others, for the commission of offences punishable u/s 138 read with Section 142 of the Negotiable Instruments Act (hereinafter to be referred as "the Act") and Sections 406 & 420 IPC, inter-alia pleading that a sum of Rs. 2 crores is payable and due from the accused to the complainant. The accused, after checking the account and to clear a part of balance of existing liability of the amount payable by them to the complainant, issued a cheque, bearing No.195374 110015108 dated 7.8.2002 drawn on Canara Bank, Faridabad for an amount of Rs. 3 lacs only. The cheque deposited by the complainant in the bank, was dishonoured and received back with the endorsement of the Bank alongwith its Memorandum dated 21.12.2002 with the remarks "Payment Stopped by Drawer" of the cheque. The endorsement of Canara Bank was received by the complainant through Punjab & Sind Bank, Chandigarh, with whom, the cheque was deposited for encashment alongwith their memorandum dated 2.1.2003.

Thereafter, the legal notices were issued to the accused on their correct addresses through counsel as well as through registered speed post with acknowledgment due and under postal certificate (UPC), vide postal receipts dated 17.1.2003. The notices sent to S.C. Khandewal (petitioner No.4) and accused R.P. Khurana were received back with the remarks "refused" and other notices sent to the accused under registered speed post and UPC were never received back.

2. Levelling a variety of allegations and narrating the sequence of events, in all, according to the complainant that since the cheque issued by the accused in discharge of their liability was dishonoured and even they did not make the payment despite issuance of legal notices on their correct addresses, so, they have committed the indicated offences in the manner described hereinbefore.

3. Taking cognizance of the offences and considering the preliminary, oral as well as documentary evidence, in the shape of resolution (Ex. C-1), cheque (Ex. C-2), memo (Ex. C-3), intimation (Ex. C-4), unclaimed envelopes (Ex. C-20 to Ex. C-25) etc., the Addl. Chief Judicial Magistrate summoned the accused to face trial u/s 138 of the Act, by virtue of summoning order dated 23.1.2004 (Annexure P12).

4. Aggrieved by the summoning order, the petitioners-accused preferred the present petition for quashing the impugned complaint (Annexure P10), summoning order (Annexure P12) and all other subsequent proceedings arising therefrom, invoking the provisions of Section 482 Cr.PC.

5. The case set up by the petitioners-accused, in brief in so far as relevant, was that as the mandatory provisions of Sections 138, 141 & 142 of the Act have not been complied with, therefore, the impugned complaint and summoning order deserve to be quashed. The petitioners-accused claimed that they have prepared the draft dated 18.2.2003 (Annexure P7) and after the expiry of its period, they prepared another draft dated 7.10.2004 (Annexure P15) for a sum of Rs. 3 lacs and offered to make the payment, through letters dated 20.2.2003 (Annexure P8), 25.2.2003 (Annexure P9) and application dated 26.7.2003 (Annexure P11). Annexing the letters/notices (Annexures P1 to P9, P11 & P13 to P18), in all, the petitioners-accused pleaded that the complaint (Annexure P10) and summoning order (Annexure P12) are abuse of process of law and are liable to be set aside. On the strength of aforesaid grounds, they filed the instant petition for quashing the complaint, summoning order and all other subsequent proceedings arising thereto, in the manner depicted hereinabove.

6. The Learned Counsel for respondent-complainant refuted the prayer of the petitioners-accused, reiterated the allegations contained in the complaint (Annexure P10) and prayed for dismissal of the main petition.

7. After hearing the Learned Counsel for the parties, going through the record with their valuable assistance and after deep consideration over the entire matter, to my mind, there is no merit in the present petition in this context.

8. However, the arguments of Learned Counsel that the petitioners-accused did not receive the legal notices after dishonour of the cheque on account of change of their addresses and since they have prepared the drafts (Annexures P7 & P15) for an amount of Rs. 3 lacs each and offered the payment to the complainant, by means of letters/application (Annexures P8, P9 & P11), so, they cannot be prosecuted u/s 138 of the Act, are neither tenable nor the observations of Hon'ble Supreme Court in cases C.C. Alavi Haji v. Palapetty Mohammed and Anr. 2007(3) RCR (Criminal) 185; Damodar S.Prabhu v. Sayed Babalal H. 2010 (2) RCR (Criminal) 851; Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, and of this Court in case Smt. Nancy Bhakoo v. Sh. Gulzar Singh 2010(2) RCR (Criminal) 478 are at all applicable to the facts of the instant case.

9. As is clear in C.C.Alavi Haji's case (supra), while interpreting the issue with regard to the expression "giving of notice" used in clause (b) of proviso to Section 138, it was ruled that the entire purpose of requiring a notice is to give an opportunity to the drawer to pay the cheque amount within 15 days of service of notice and thereby free himself from the penal consequences of Section 138. However, in that case, return of notice sent through registered post on the correct address was held to be sufficient compliance of proviso to Section 138 of the Act.

10. Sequelly, in Damodar S. Prabhu's case (supra), the Hon'ble Apex Court formulated the following judicial guidelines for composition of the offence under the Act:

(i) If the accused made an application for compounding of offences at first or second hearing of the case then compounding may be allowed by the Court without imposing any costs on the accused.

(ii) If application is made before Magistrate at a subsequent stage, accused will be required to pay 10% of the cheque amount by way of costs.

(iii) If application is made before Sessions Court or High Court in revision or appeal compounding may be allowed on payment of 15% of the cheque amount.

(iv) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

(v) The competent Court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance.

(vi) Any costs imposed in accordance with these guidelines should be deposited with the Legal Services Authority operating at the level of the Court before which compounding takes place.

11. Likewise, in M/s Pepsi Foods Ltd.'s case (supra), while dealing with the cases under the provisions of Prevention of Food Adulteration Act, 1954 and Sections 245 and 482 Cr.P.C., it was held that the Magistrate should apply his mind before

summoning the accused and he can discharge him at any stage if the charge is groundless. But that does not mean that the accused cannot approach the High Court u/s 482 Cr.PC.

12. Similarly, in Smt. Nancy Bhakoo's case (supra), a cheque was issued for an amount of Rs. 50,000/- in favour of complainant in discharge of his legal liability. In the wake of complaint u/s 138 of the Act, the accused was ready to pay Rs. 1,50,000/- against the due amount of Rs. 50,000/- . So, on the peculiar facts and in the special circumstances of that case, it was observed by this Court that continuation of complaint would amount to abuse of process of law.

13. Possibly, no one can dispute with regard to the aforesaid observations, but to me, the same would not come to the rescue of the petitioners-accused in the present controversy.

14. As is evident from the record and it has been specifically mentioned in paras 5 & 6 of the complaint (Annexure P10) that a sum of over Rs. 2 crores is payable and due from the accused to the complainant and in order to clear their partial existing liability out of the total amount, they issued the cheque in question dated 7.8.2002 only for a sum of Rs. 3 lacs in favour of the complainant, which admittedly, was dishonoured. Having completed all the codal formalities, the complainant issued the legal notices on their correct addresses through counsel, registered speed post with acknowledgment due and also through UPC, but the petitioners-accused did not make the payment of the amount within the stipulated period of 15 days.

15. Ex facie, the celebrated contention of Learned Counsel that since the petitioners-accused prepared the 1st draft (Annexure P7) and after expiry of its period, they prepared another draft (Annexure P15) and offered the payment to the complainant, by way of letters/application (Annexures P8, P9 & P11), so, the criminal complaint (Annexure P10) cannot continue against them, is not only devoid of merit but misplaced as well. Although the petitioners-accused have placed on record photo copies of drafts (Annexures P7 & P15), but original drafts have not seen the door of the Court.

16. Not only that, no material, much less cogent, is forth coming on record, even to suggest remotely that the alleged drafts were prepared and payment of that amount was offered, in lieu of same amount/subject matter of dishonoured cheque or they have prepared the subsequent drafts, in order to discharge their other liability. As to whether; (i) the drafts (Annexures P7 & P15) were actually prepared and payment of the amount was offered, through the medium of letters/application (Annexures P8, P9 & P11), in lieu of the same very amount of dishonoured cheque or to meet some other liability; (ii) whether the offers (Annexures P8 & P9) and application (Annexure P11) were genuine or not or were prepared to create a false defence, or the legal notices were received or not by the petitioners-accused on account of their change of address; (iii) they have informed the concerned Post Master, with regard to their changed address, vide

letters (Annexures P1 & P5) or to department of Company Affairs, through letter (Annexure P2) and (iv) what are their effects, are the disputed questions of facts, which require evidence and can only be decided at the time of trial. The petitioners-accused cannot derive any benefit in this respect, particularly when they have not actually paid the indicated amount to the complainant till today.

17. At the same time, no implicit reliance can be placed on the letters/notices (Annexures P1 to P9, P11 & P13 to P18) for want of their legal proof. These documents may indicate the probable defence of the petitioners-accused at the time of trial. Be that as it may, but these copies of letters/notices cannot legally be appreciated by this Court at this stage, in exercise of powers u/s 482 Cr.PC. The petitioners-accused would be at liberty to prove by producing cogent evidence in the trial Court that they did not receive any legal notice on account of change of address or subsequently they prepared the drafts, in lieu of the same very amount of dishonoured cheque and not for any other transaction and whether the documents are genuine or were doctored by them to create a false defence. All the above mentioned disputed questions of facts would be the moot points to be decided, after the appreciation of evidence brought on record by the parties, during the course of trial by the trial Court and not otherwise. Therefore, the contrary submissions of Learned Counsel for petitioners-accused "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances.

18. There is another aspect of the matter, which can be viewed from a different angle. What cannot possibly be disputed here is that the Code of Criminal Procedure is an epitome of law and is complete Code relating to criminal procedure from the first stage of inquiry, filing of complaint, summoning the accused, recording of precharge evidence and framing of charge or to discharge the accused. It regulates the procedure till the conclusion of the trial and all other related matters. Chapters XV & XVI postulate the various procedural provisions which are required to be followed by the Magistrate for taking cognizance in criminal cases. At the first instance, it is for the Magistrate to apply his mind whether to frame charge or to discharge the accused on the basis of material/evidence on record.

19. A conjoint and meaningful reading of these provisions would reveal that if there is no material/evidence on the record, then the accused would be discharged by the Magistrate, otherwise charge would be framed and the trial will commence. In the present case, even the Magistrate has not yet framed the charge and petitioners-accused have straightway jumped to file the instant petition for quashing the criminal proceedings at the initial stage, which is not legally permissible, as per law laid down by Hon''ble Supreme Court in case Dharmatma Singh Vs. Harinder Singh and Others,

20. Sequelly, the questions, scope and jurisdiction of this Court for quashing the criminal prosecution at the initial stage of the trial u/s 482 Cr.PC are not res integra. It is well settled proposition of law that in case, on the bare reading, the

offences are made therefrom, no order can be made for quashment of criminal prosecution. Such criminal prosecution at the initial stage can be quashed in the rarest of the rare cases, only if it is proved that the same was lodged maliciously or vexatiously in order to wreak vengeance and not otherwise, in view of the law laid down by the Hon"ble Apex Court in a celebrated judgment in case State of Haryana and others Vs. Ch. Bhajan Lal and others, , which was again reiterated in case Som Mittal v. Government of Karnataka 2008(2) R.C.R.(Criminal) 92.

21. An identical point came to be decided by the Hon"ble Supreme Court in a recent judgment in case Jeffery J. Diermeier & Anr. v. State of West Bengal & Anr. 2010(3) R.C.R.(Criminal) 183. Having interpreted the scope of section 482 Cr.PC, it was ruled (para 16) as under:-

16. Before addressing the contentions advanced on behalf of the parties, it will be useful to notice the scope and ambit of inherent powers of the High Court u/s 482 of the Code. The Section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of process of Court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice.

22. The indicated Bench mark and requisite ingredients for quashing the criminal prosecution emerging out from the aforesaid judgments are totally lacking in the instant case. The ratio of law laid down in the aforementioned judgments "mutatis mutandis" is applicable to the facts of this case and is the complete answer to the problem in hand.

23. No other legal point, worth consideration, has either been urged or pressed by the Learned Counsel for the parties.

24. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of the main case, as there is no merit, therefore, the present petition is hereby dismissed in the obtaining circumstances of the case.

25. Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on merits during the trial of the main case, as the same has been so recorded for a limited purpose of deciding the instant petition in this relevant connection.