

(2019) 08 CAL CK 0067

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 3616 Of 2017

M/s. Capital First Limited And Ors

APPELLANT

Vs

M/s. Shree Shyam Pulses Private Limited

RESPONDENT

Date of Decision : 22-08-2019

Acts Referred:

Negotiable Instruments Act, 1881 — Section 20, 138, 138(b)
Indian Penal Code, 1860 — Section 34, 120B, 405, 406, 415, 420, 465, 468, 469, 471, 506
Code Of Criminal Procedure, 1973 — Section 200, 482

Citation : (2019) 08 CAL CK 0067

Hon'ble Judges : Madhumati Mitra, J

Bench : Single Bench

Advocate : Sandipan Ganguly, Navnil De, Sourav Ghosh, Soumen Ghosh, Farnaz Nasim, Sabir Ahmed, Baisali Basu

Judgement

Madhumati Mitra, J

Petitioner no.1 is a company incorporated under the provision of Companies Act and petitioner no.2 is the Regional Legal Manager, Petitioner nos. 3,4,5,7 and 11 are the Independent Directors of the petitioner no.1, petitioner no.6 is the Chairman and Managing Director of petitioner no.1 and petitioner nos. 8 and 9 are the Executive Directors of petitioner no.1 and petitioner no.10 is the Executive Director of petitioner no.1.

Petitioners have approached for quashing of the criminal proceedings initiated on the basis of complaint filed by the opposite party i.e. C.Case no.588 of 2017 under Section 406/465/468/469/471 read with Section 34 and 120B of the Indian Penal Code pending before the Learned Metropolitan Magistrate, 19th Court, Calcutta.

Before dealing with the rival submissions of the parties, it would be appropriate to set out the facts briefly.

Complainant took loan of Rs.10,00,000/- from petitioner no.1 company and agreed to repay the same along with interest by way of 24 equal monthly instalments of Rs.50,896/- each. Complainant executed loan agreement and ECS debit mandate in favour of petitioner no.1 for the amount of 24 EMI to be debited from HDFC Bank, Kolkata for repayment of the said loan along with interest and on demand of the said company also entrusted or parted 8 blank Banking Instruments being cheque nos. 688577 to 688584 of HDFC Bank duly signed as security deposit at the time of execution of loan agreement with encashment of seven ECS, the complainant made repayment of Rs.3,56,272/- to the petitioner no.1. Complainant decided to foreclose the loan account after realizing that the rate of interest was unjust. On 07.05.2014, the complainant expressed the intention to foreclose the loan account. On 13.05.2014, the petitioner company demanded a sum of Rs.8,38,333/- along with penal interest, overdue interest, pre-closure charges. Complainant protested and asked to waive the interest of 17 months. Petitioner company refused to reduce the amount. It has been alleged by the complainant that at the time of execution of the loan agreement the opposite party/complainant had protested regarding the rate of interest which was at the rate of 20% per annum and also against the policy of Reserve Bank of India. It has been claimed by the complainant that assurance was given to the complainant that the rate of interest would be considered after payment of first 6 instalments on time. Complainant demanded 8 blank banking instruments, but the complainant was threatened by the petitioners. Complainant sent a notice dated 21.03.2014 to the petitioner company for return of the blank banking instruments and also requested not to misuse the same. On 23.05.2014, petitioner company gave a reply stating that the said instruments were issued by the complainant voluntarily in discharge of legal liabilities. Thereafter, the complainant received notices dated 11.08.2014, 25.06.2015, 13.10.2015, 02.09.2016 under Section 138(b) of the Negotiable Instruments Act for Rs.3,05,376/- each as the aforesaid cheques were returned unpaid to the petitioners with remark 'payment stopped by the drawer'. Complainant gave reply to the aforesaid notices. Thereafter, the petitioner company on the basis of the aforesaid notices initiated four separate proceedings viz. complaint cases under Section 138 of the Negotiable Instruments Act. It has been alleged by the complainant that the accused company refused to return the blank cheques with a view to make the complainant defaulter and ultimately converted the same into valuable documents and used the same as genuine for illegal purpose knowing very well that the same were forged and got the same dishonoured before initiating the aforesaid four criminal proceedings against the complainant.

Complaint was registered as Complaint Case No.588 of 2017 by the Learned Additional Chief Metropolitan Magistrate, Calcutta and thereafter the complaint case was transferred to the Court of Metropolitan Magistrate 19th Court for disposal. On 13.09.2017, Learned Metropolitan Magistrate 19th Court after examining the complainant and his witness under Section 200 of the Code of Criminal Procedure issued process against the present petitioners to face trial for

commission of alleged offences punishable under Sections 406/465/468/469/471/34/120B of the Indian Penal Code.

Before proceeding further in the matter, it would be better to mention the admitted facts which have been reflected from the various documents furnished by the parties as well as from the submissions advanced by the Learned Counsel in the course of hearing. Those facts are as under:-

(a) Complainant had approached for loan to the petitioner no.1 and accordingly a loan agreement vide loan Agreement No.1295067, dated 29.06.2013 was entered into and Rs.10,00,000/- was disbursed to the complainant as loan on condition that the complainant would repay the same along with interest by way of 24 monthly instalments as well as delayed payment charges and foreclosure charges, etc. Pursuant to the said loan agreement, the complainant issued cheques in question towards repayment of the said loan as well as security of the loan.

(b) Opposite party/complainant paid seven instalments i.e. Rs.3,56,272/- in total towards repayment and thereafter, failed to pay the instalments in terms of agreement. Complainant expressed the intention to foreclose the loan and accordingly the petitioner company furnished the statement of the said loan account to the complainant.

(c) The complainant issued a letter dated 21.03.2014 to the petitioner company not to present the cheques bearing nos.688577 to 688584 and complainant instructed its banker to 'stop payment'. In the meantime, the cheques in question were presented for encashment by the petitioner company on different dates and all the cheques were returned unpaid with remark 'stop payment' by the drawer. Petitioner company sent separate four notices for dishonour of four cheques under Section 138(b) of the Negotiable Instruments Act, demanding the amount covered by the cheques.

(d) Complainant sent replies to the said notices under Section 138(b) of the Negotiable Instruments Act and denied to make payment and informed the petitioner company regarding institution of Title Suit No.768 of 2014, before the City Civil Court, VIIIth Bench, Calcutta praying for a declaration that the said demand notice dated 13.05.2014 was not binding on the complainant/opposite party. Ultimately that title suit was dismissed for default.

(e) Petitioner company started four complaint cases against the complainant as it failed to make payment in terms of the demand notices under Section 138(b) of the N.I.Act.

Mr. Sandipan Ganguly, Learned Senior Counsel appearing for the petitioners in support of his contention for quashing of the criminal proceeding has categorically contended that continuance of the complaint Case No.588 of 2017 under Sections 406,465,468 and 469,471 read with Sections 34 and 120B of the Indian Penal Code pending before the Learned Metropolitan Magistrate 19th

Court would be an abuse of the process of the Court and the proceedings are liable to be quashed.

He has vigorously argued that the cheques in questions were duly signed by the authorized representative of the complainant and the allegation of forgery does not arise at all. He has further submitted that the factum of taking loan from the petitioner company by the complainant is an admitted fact and it is also admitted that the complainant executed a loan agreement and agreed to repay the loan amount along with interest by way of instalments. During the course of hearing Learned Counsel has invited the attention of the Court to the loan agreement at Annexure-B, i.e. pages 49 to 63 and contended that the cheques in question were executed by the complainant in favour of the petitioner company in terms of the loan agreement. He has further drawn the attention of the Court to the several clauses of the loan agreement particularly Clauses 4,6,6.1,8,10.7,10.8,10.9,10.10,11,21 and 27. According to his contention, as per the terms of Clause 10.9 of the loan agreement the borrower has given undertaking not to instruct his bankers to stop payments of the cheques and not to instruct the depositing of the cheques. He has also submitted that the borrower entered into the loan transaction after knowing fully well the contents of the agreement as reflected in Clause 27 of the agreement. He has forcefully contended that the proceedings pending against the petitioners before the Learned Magistrate has been initiated maliciously with ulterior motive to avoid the payment of the loan amount along with interest.

In support of this contention, Learned Counsel has strongly placed reliance on several documents annexed to the application and the documents submitted by the petitioners by way of supplementary affidavit.

Learned Counsel for the petitioner has cited the following decisions to strengthen his contention for quashing of the criminal proceedings pending against the petitioners.

The decisions cited by the Learned Counsel for the petitioners as under:-

1. Sunil Kumar Vs. Escorts Yamaha Motors Ltd. & Ors reported in (1999) 8 SCC 468, (1999) SCC (Cri) 1466;
2. Mahindra & Mahindra Financial Services Ltd. & Anr. Vs. Rajiv Dubey reported in (2009) 1 SCC 706, (2009) 1 SCC (Cri) 321;
3. Eicher Tractor Ltd. & Ors. Vs. Harihar Singh & Anr. reported in (2008) 16 SCC 763, (2010) 4 SCC (Cri) 425;
4. Sunrise Sports India Pvt. Ltd. & Anr. Vs. State of West Bengal & Anr. reported in (2008) SCC Online Cal 339, (2008) 4 CHN 400;
5. Nita Kanoi @ Bansal Vs. Paridhi & Anr. reported in (2015) 2 CCr LR(Cal) 597;
- 5A. Sujit Kumar Pal Vs. State of West Bengal & Anr. reported in (2017)1 CCr LR (Cal) 97;

6. S.K. Alagh Vs. State of Uttar Pradesh & Ors reported in (2008) 5 SCC 662, (2008) 2 SCC (Cri) 686;

7. Maharashtra State Electricity Distribution Company Ltd and Anr. Vs. Datar Switchgear Ltd and Ors reported in (2010) 10 SCC 479, (2011) 1 SCC(Cri) 68;

8. Mohammed Ibrahim & Ors Vs. State of Bihar & Anr reported in (2009) 3 SCC (Cri)929, (2009) 8 SCC 751.

The Learned Counsel for the opposite party/complainant, resisting the submissions advanced by the Learned Counsel for the petitioner has urged the following contentions:-

(a) The petitioner company demanded unjustified rate of interest over the principal amount which is against the policy of Reserve Bank of India;

(b) Petitioner company demanded a sum of Rs.8,38,333/- along with penal interest when the complainant intended to foreclose the loan transaction and refused to waive the interest for rest 17 months and the penal interest etc;

(c) In spite of repeated requested the petitioner company did not return the blank cheques to the complainant and converted the same as valuable security and presented the same before the Bank for encashment and got the same dishonoured by committing forgery and practicing fraud;

(d) The petitioner no.1 being a legal entity, acts through its Directors or other authorized officers and as such all the petitioners are liable for the commission of alleged offences in respect of which process was issued to face trial;

(e) Ingredients of the alleged offences are present in the complaint petition against the present petitioner and as such no question of quashing of the criminal proceeding arises in the present case.

In support of the above contention the Learned Counsel for the opposite party has placed his reliance on the documents viz. letter issued by the complainant regarding request of handing over the blank cheques to the complainant and not to present the same for encashment. Learned Counsel has also laid stress on the proposal for forecloser of the loan account and the high rate of interest on the loan amount.

Learned Counsel for the complainant has cited the following decisions:-

1. State of Karnataka Vs. M. Devendrappa and Another reported in (2002) 3 SCC 89;

2. Sonu Gupta Vs. Deepak Gupta and Others reported in (2015) 3 SCC 424;

3. State of Madhya Pradesh Vs. Surendra Kori reported in (2012) 10 SCC 155;

4. Sau. Kamal Shivaji Pokarnekar Vs. The State of Maharashtra and Others reported in (2019) SCC Online SC 182.

The gravamen of the allegation in the complaint is that the petitioners converted the blank banking instruments into valuable documents and presented the same for encashment and got the same dishonoured with male fide intention.

In the instant case, the factum of issuance of blank cheques by the complainant is admitted. It is also admitted that cheques in question were drawn on an account maintained by the complainant with the banker. It is also an admitted fact that the complainant took loan of Rs.10,00,000/- from the petitioner by executing a loan agreement on several terms and conditions to repay the same by way of 24 monthly instalment. It is also an admitted fact that the complainant made default in payment of loan i.e. there was existing debt or other liability to make payment. From Clauses 10.07, 10.08, 10.09, 10.10 and Clause 27 of the loan agreement and cheque submission form (CSF), it appears that pursuant to the loan agreement cheques in question were drawn in favour of Capital First Limited i.e. the petitioner no.1 and the authorized representative Hemant Murarka signed on the cheques as authorized representative of M/s. Shree Shyam Pulses Private Limited after knowing the contents of the agreement.

In this connection, Learned Counsel appearing for the petitioners has submitted that in view of Section 20 of the Negotiable Instruments Act the person who has handed over a blank cheque to another person, gives him authority to fill up the contents therein. It is his specific contention that the allegations in the complaint that the petitioners converted the blank cheques as valuable security, fraudulently has no basis at all.

In this connection, reliance may be placed on the decision of Sunil Kumar Versus Escorts Yamaha Motors Ltd. and Others reported in (1999) 8 Supreme Court Cases 468.

From paragraph 2 of the said judgment, it appears that the allegation in the FIR was that certain cheques had been given to the respondents "with the specific understanding that these cheques can be presented against delivery of future vehicles and not for any past liability or dues, but the respondents presented the same which of course could not be encashed in view of the directions given by the appellant drawer. However the appellant had to sustain the loss of Rs 8982 as commission charges. The respondents filed application in the Delhi High Court for quashing of the FIR, inter alia, on the ground that the averments in the FIR do not make out the offence of either Section 406 or Section 420 as the necessary ingredients under Sections 405 and 415 I.P.C. have not been indicated. The respondents also took the ground that the criminal proceedings pursuant to the FIR have been initiated with an ulterior motive and thereby there has been a gross abuse of the process of law and as such FIR should be quashed."

Hon'ble Apex Court dismissed the appeal after observing that the High Court was well within its power in quashing the FIR as otherwise, it would tantamount to an abuse of the process of the Court.

Similar view was taken by the Hon'ble Apex Court in the decision of Mahindra and Mahindra Financial Services Limited and Another Vs. Rajib Dubey reported in (2009)1 Supreme Court Cases 706. Paragraph 18 of the said judgment runs as under:-

"18. It is interesting to note that the respondent does not dispute issuance of cheques. Even a casual reading of the complaint does not show that the ingredients of Section 406 I.P.C. are in any event made out. It is also not understandable as to how Section 294 has any application to the facts of the case much less Section 506 I.P.C. In addition to this, perusal of the complaint apparently shows the ulterior motive. It is clear that the proceeding initiated by the respondent clearly amounted to abuse of process of law."

In paragraph 19 of the said judgment Hon'ble Court made reference to the decision of State of Haryana Vs. Bhajan Lal and observed that the case at hand falls under category 7. Category seven of the judgment of State of Haryana Vs. Bhajan Lal is as under:-

"7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The factual scenario of the case at hand clearly indicated that the impugned criminal proceedings have been started as a counter blast to the proceedings initiated by the petitioners for dishonor of cheques issued by the complainant.

In this connection, another decision of the Hon'ble Apex Court in Eicher Tractor Limited and Others Vs. Harihar Singh and Another= may be mentioned.

In paragraph 14 of the said judgment the Hon'ble Apex Court was pleased to observe as under:-

"14. The case at hand squarely falls within the parameters indicated in Category (7) of Bhajan Lal case. The factual scenario as noted above clearly shows that the proceedings were initiated as a counterblast to the proceedings initiated by the appellants. Continuance of such proceedings will be nothing but an abuse of the process of law. Proceedings are accordingly quashed."

The above discussions lead me to observe that in the case at hand, the uncorroborated allegations made in the complaint do not prima facie constitute the commission of the alleged offences and the impugned criminal proceedings are the counterblast of the proceedings initiated against the complainant under the provisions of Negotiable Instruments Act.

In my opinion, the case at hand comes within parameters (7) of the decision of Hon'ble Supreme Court in State of Haryana and Others Vs. Ch. Bhajan Lal and others reported in AIR 1992 SC 664 and in other subsequent cases regarding exercise of inherent power under Section 482 of the criminal procedure. The

impugned criminal proceeding being complaint case no. 588 of 2017 requires to be quashed against the petitioners.

I am of the view that continuance of the criminal proceedings pending against the present petitioner would amount to an abuse of the process of the Court. Criminal proceedings being C.No. 588 of 2017 is hereby quashed.

Interim order stands vacated.

Urgent photostat certified copy of this order, if applied for, shall be supplied expeditiously after complying with all necessary legal formalities.