
(2008) 05 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 30177-M of 2005

M/s. Moderna Radio House and Others

APPELLANT

Vs

M/s. Whirlpool of India Ltd.

RESPONDENT

Date of Decision : 27-05-2008

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2008) 26 CriminalCC 917

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Advocate : Jagdish Manchanda, for the Appellant;

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—This order shall dispose of two petitions bearing Crl. Misc. No. 30177-M of 2005 M/s. Moderna Radio House & Ors. v. M/s. Whirlpool of India Ltd., and Crl. Misc. No. 30175-M of 2005 titled M/s. Moderna Radio House & Ors. v. M/s. Whirlpool of India Ltd., as common questions of law and facts are involved in both these petitions.

For facility the facts are being taken from Crl. Misc. No. 30177-M of 2005.

2. The petitioners seek quashing of complaint No. 867/2 titled M/s. Whirlpool of India Ltd. v. M/s. Moderna Radio House and others, dated 02.08.2001, Annexure P6, filed u/s 138 of the Negotiable Instruments Act, 1881 (for short the Act) and the summoning order dated 12.10.2001, Annexure P7.

3. Petitioner No. 1 is a firm whereas petitioners Nos.2 to 4 are the partners of petitioner No. 1, who are having business dealing with M/s. Whirlpool of India Ltd. The complainant is engaged in business of manufacturing household appliances and had appointed petitioner firm as its distributor. It is claimed by the petitioners that there was dispute between the parties with regard to the credit notes to which the petitioners were entitled to. The petitioners issued six post dated cheques of Rs. 5 lacs each to the complainant-respondent and one of

the said cheques was Cheque No. Ca/99/ DENO.008255 drawn on Bank of Baroda, Rajkot. It is the case of the petitioners that as their claim was not settled, a request was made to the respondent claimant not to deposit the cheque before the settlement of claim. It is further the case of the petitioners that instructions were issued to the bank to stop the payment of cheques issued.

4. The allegations against the petitioners are that when cheque was presented for encashment same was returned vide Memo dated 29.05.2001 with the remarks that payment stopped by the drawer. The respondent thereafter issued a statutory notice and on nonpayment of amount of the cheque complaint u/s 138 read with Sections 141 and 142 of the Act and Section 420 read with Section 120B/34 IPC was filed.

5. On the basis of preliminary evidence led by the complainant, petitioners have been summoned to face trial u/s 138 of the Act.

6. It is the case of the petitioners that on 10.05.2002 the parties arrived at a compromise and agreement was executed between them. As per the said agreement fresh cheques were issued by the petitioners firm in favour of the complainant. In the said compromise it was mentioned that the cases filed by the complainant will continue till the last cheque given by the petitioners firm was encashed. Copy of the agreement has been placed on record as Annexure P8.

7. The petitioners seek quashing of the complaint and the summoning order and subsequent proceedings on the plea that even if the allegations levelled in the complaint are taken to be true on their face value no offence u/s 138 of the Act has been made out. The petitioners claim that in the complaint itself the complainant has alleged that information for non-presentation of cheque was received and therefore, no offence under the Act is made out.

8. In support of his contention Learned Counsel for the petitioners has placed reliance on the judgment of Hon''ble Supreme Court in the case of M/s. Electronics Trade and Technology Development Corpn. Ltd., Secunderabad Vs. M/s. Indian Technologists and Engineers (Electronics) Pvt. Ltd. and another, Para No. 6 of the said judgment reads as under:-

6. Shri Nageshwara Rao, Learned Counsel appearing for the respondents, contended that stoppage of payment due to instructions does not amount to an offence u/s 138 and that, therefore, the ingredients in Section 138 have not been satisfied. We find no force in the contention. The object of bringing Section 138 on statute appears to be inculcate faith in the efficacy of banking operation and credibility in transacting business on negotiable instruments. Despite civil remedy, Section 138 intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induce the payee or holder in due course to act upon it. Section 138 draws presumption that one commits the offence if he issues the cheque dishonestly. It is seen that once the cheque has been drawn and issued to the payee and the payee has presented the cheque and thereafter,

if any instructions are issued to the bank for non-payment and cheque is returned to the payee with such endorsement, if amounts to dishonour of cheque and it comes within the meaning of Section 138. Suppose after the cheque is issued to the payee or to the holder in due course and before it is presented for encashment, notice is issued to him not to present the same for encashment and yet the payee or holder in due course presents the cheque to the bank for payment and when it is returned on instructions Section 138 does not get attracted. Under these circumstances, since the accused has not made the payment within 15 days from the date of the receipt of the notice issued by the payee or the holder in due course, the dishonest intention is inferable from those acts. Accordingly, the ingredients as contained in Section 138 have been prima facie made out in the complaint. The High Court, therefore, was wholly incorrect in the conclusion that the ingredients have not been made out in the complaint. The orders of the High Court quashing the complaints are illegal. They are accordingly set aside and the trial court is directed to dispose of the matters as expeditiously as possible. It is made clear that we do not intend to express any opinion on merits.

9. The reading of the observation made above by Hon"ble Supreme Court would show that it does not support the contentions raised by the Learned Counsel for the petitioners.

10. Learned Counsel appearing on behalf of the petitioners thereafter contended that the parties had arrived at a compromise vide agreement dated 10.05.2002 before summons were served upon the petitioners and issuance of fresh cheques which clearly indicates that the offence stands compounded by way of agreement and therefore, present complaint is liable to be quashed.

11. In support of his contention the Learned Counsel for the petitioners has placed reliance on the judgment of Hon"ble Delhi High Court. Hon"ble Delhi High Court in the case of Venkatesh Dutt v. M/s. M.S. Shoes East Limited, 2004(2) RCR (Cri.) 24 has been pleased to lay down as under:-

7. Bare perusal of the Section shows that dishonored cheque drawn by a person on an account maintained by him with a banker for payment any amount of money to another person from out of that amount for the discharge in whole or in part of any debt, or other liability if returned by the Bank unpaid vests a legal right in the aggrieved person to initiate the proceedings u/s 138.

8. The very fact that a party enters into a compromise during the pendency of a complaint filed u/s 138 of the Act shows the cause of action pertaining to the initial cheque ceases to be available to the complainant as fresh cause of action becomes available in respect of the cheques issued pursuant to the agreement between the parties in case those cheques are dishonored.

9. By no stretch of imagination complaints u/s 138 relating to several cheques given by a party to the complainant on account of the agreement between the parties towards liability against initial cheque leading to the filing of the original

complaint can be allowed to go simultaneously. Reason is simple. Section 138 of the Negotiable Instruments Act specifically refers to only that cheque which is issued towards the liability drawn by a person on an account with a banker for payment of money and no other cheque. Once other parties enter into an agreement during the pendency of such complaint or proceedings and complainant accepts the cheques given by the accused in lieu of the subject matter of original complaint every cheque gives rise to a cause of action if it on presentation is dishonored as in that case original complaint becomes extinct. Aggrieved person has a right to file as many complaints as many cheques were given to him as every cheque under the Act provides an independent and fresh cause of action to the aggrieved person.

10. Even otherwise, it is difficult to accept that two parallel proceedings, one emanating from the original cheque and others emanating from the terms of the agreement between the parties, can be allowed to run simultaneously. If the earlier complaint is also allowed to continue along with the subsequent complaints then the very purpose of agreement between the parties and issuance of fresh cheques become meaningless as fresh cheques issued by a party are towards the original liability that gave rise to the initial complaint filed u/s 138 of the Act.

11. Proceedings u/s 138 of the Act are penal proceedings and are independent of civil remedy of suit for recovery and therefore cannot be allowed to be converted into a civil suit. Since the offence u/s 138 of the Negotiable Instruments Act is of compoundable nature parties may decide to compound the offence u/s 138 of the Act by way of agreement. Once the complainant agrees to accept the cheques towards the liability of the accused during the pendency of the complaint, it amounts to compounding the offence resulting in acquittal as he has with open eyes entered into the agreement and accepted the cheques. Any stipulation like clause 8 in the agreement has no legal value being against the very provision of Section 138 of the Act which makes the drawer liable for penal proceedings in respect of every such cheque which is dishonored but does not encompass the original cheque in lieu of which several cheques are issued and accepted. Every such cheque, if dishonored, shall make the drawer liable for penal proceedings as envisaged u/s 138 of the NI Act.

12. However, on consideration of the matter it would be seen that this authority does not support the case of the petitioners. In the present case one of the terms of the compromise was that the cases pending against the petitioners would continue and therefore, it cannot be said that by entering into compromise dated 10.05.2002 offence stood compounded.

13. Learned Counsel for the petitioners finally placed reliance on the judgment of Hon'ble Supreme Court in the case of K.K. Sidharthan v. T.P. Praveena Chandran and Another, 1996 (2) ACJ 555 (S.C.) : 1996 (6) SCC 396 to contend that as in the present case cheque was dishonoured in view of the instructions to stop payment, no offence u/s 138 of the Act can be said to have been made out. Para

No. 3 of the said judgment reads as under:-

3. The case of the appellant is that the cheques were returned, not because of insufficient funds, but because he had issued stoop memo to the bank for reasons detailed in the letter of appellants Advocate dated 04.10.1994 addressed to the respondent. This letter was replied by the respondent on 12.10.1994 stating, inter alia, that the allegations made in the letter of 04.10.1994 were not true; and date and place may be fixed for perusal of the accounts and connected records. The appellant has produced a communication of the Indian Overseas Bank, Thrissur Branch, which is at p.64 of the Paper-Book, showing that when the cheques in question were presented there was sufficient balance in the account of the appellant. This communication bears the numbers of two cheques which tally with those mentioned in the complaint. We are, therefore, satisfied that the cheques were not returned because of insufficient funds, as is the allegation in the complaint.

14. Thus, it would be seen that in the present case by leading evidence the petitioners have to show that there were sufficient funds with the petitioners. Thus, the contention of the Learned Counsel for the petitioners cannot be accepted. The allegations made in the complaint do show commission of offence, and the defence raised is to be considered by the learned trial court after the parties are allowed to lead evidence. this Court at this stage in exercise of powers u/s 482 Cr. P.C. is not to consider the defence of the accused.

Both the petitions being without any merit any merit are ordered to be dismissed.