

(2015) 10 DEL CK 0210
In the Delhi High Court
Case No : Criminal M.C. 2917/2015

MVL Industries Limited and Others

APPELLANT

Vs

IFCI Factors Limited

RESPONDENT

Date of Decision : 07-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 263(g), 311
Negotiable Instruments Act, 1881 (NI) — Section 138, 143, 145(2)

Citation : (2015) 4 JCC 289

Hon'ble Judges : Suresh Kait, J.

Bench : Single Bench

Advocate : N. Hariharan, Senior Advocate, Vaibhav Sharma, Siddharth S. Yadav and Deepak Sabharwal, Advocates, for the Appellant; M.S. Vinaik and Deepak Bashta, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—Vide the present petition, petitioners seek directions thereby setting aside the orders dated 24.06.2015 and 08.07.2015 passed by Id. MM (NI Act)-2, South East, Saket Court, New Delhi in CC. No. 2140/2014 pending before it.

2. The petitioners further seek directions thereby allowing them to cross-examine the complainant, who is a sole witness in the aforesaid complaint case filed under Section 138 Negotiable Instruments Act.

3. Vide order dated 24.06.2015, Id. Trial Court closed the right of the petitioners to cross-examine the complainant and thereafter vide order dated 08.07.2015 the application of the petitioners filed under Section 311 of Cr.P.C. was also dismissed.

4. Id. Sr. Counsel appearing on behalf of the petitioners submits that earlier the matter was listed on 24.04.2015 and adjourned after two months on 24.06.2015, i.e., during the summer vacation. At that time, Id. Counsel for the

petitioners was not in town. However, the moment he came from abroad, he moved an application under Section 311 Cr.P.C. seeking permission to cross-examine the complainant. However, the same was dismissed vide order dated 08.07.2015.

5. Moreover, during settlement proceedings, petitioners had already paid an amount of Rs. 18.57 Crore to the complainant and want to cross-examine him. Therefore, if the opportunity to cross-examine the complainant is not granted, it will prejudice the rights of the petitioners.

6. On the other hand, Id. Counsel appearing on behalf of the respondent vehemently opposed the present petition and submits that since the petitioners did not cross-examine the complainant, his right was closed vide order dated 24.06.2015 and thereafter, the petitioners moved an application under Section 311 Cr.P.C., which was also dismissed for the reason that the petitioner has adopted the tactics to delay the case.

7. To strengthen his arguments, Id. Counsel for the respondent has relied upon a case decided by the Coordinate Bench of this Court vide order dated 28.07.2010 in the batch of petitions being lead matter Rajesh Aggarwal v. State and Anr. in Crl. M.C. 1996/2010, wherein held as under:

"8. The procedure being followed presently by learned MMs under section 138 of N.I. Act does not commensurate with the summary trial provisions of Cr.P.C. and provisions of Negotiable Instrument Act and that is the reason that decisions of cases under section 138 of N.I. Act is taking unnecessary long time and the complaints remain pending for years. The procedure as prescribed under law is that along with complaint under section 138 of N.I. Act, the complainant should file affidavit of his evidence and all necessary documents like dishonour memo, returned cheque, notice of demand and then learned MM should scrutinize the complaint & document & if he finds that the affidavit and the documents disclose dishonour of cheque issued by the accused, issuance of a demand notice by the complainant, nonpayment of the cheque amount by the accused despite notice, cheque return memo of the bank etc. and if the court finds that the complaint was filed within the period of limitation, cognizance is to be taken and notice of appearance of accused should be sent to the accused. In case the accused appears before the court of MM, the Court should ask him as to what was his plea of defence. Normally the first date is wasted by the courts of MM just by taking bail bond of the accused and passing a bail order, while section 251 & 263(g) of Cr.P.C. provide that when the accused appears before MM in a summary trial proceedings, the particulars of the offence, to which he is accused, shall be stated to him & he should be asked whether he pleads guilty or he has any defence to make. This is the mandate of section 143 of N.I. Act, which provides summary trial of offence in terms of Cr.P.C. Under Section 263(g) of Cr.P.C., the court has to record the plea of the accused and his examination. It is thus obvious that in a trial of an offence under section 138 N.I. Act the accused cannot simplicitor say "I plead not guilty" and wants to face trial. Since offence

under section 138 of N.I. Act is a document based technical offence, deemed to have been committed because of dishonour of cheque issued by the accused or his company or his firm, the accused must disclose to the Court as to what is his defence on the very first hearing when the accused appears before the Court. If the accused does not appear before the Court of MM on summoning and rather approaches High Court, the High Court has to refuse to entertain him and ask him to appear before the Court of MM as the High Court cannot usurp the powers of MM and entertain a plea of accused why he should not be tried under section 138 . This plea as to why he should not be tried under section 138 is to be raised by the accused before the Court of MM under section 251 & under section 263 (g) of Cr.P.C. Along with his plea he can file necessary documents and also make an application, if he is so advised, under Section 145(2) of N.I. Act to recall the complainant to cross-examine him on his plea of defence. However, only after disclosing his plea of defence he can make an application that the case should not be tried summarily but as a summon trial case. This application must disclose the defence of the accused and the reasons why he wants the case to be tried as a summon trial.

17. The summary trial procedure to be followed for offences u/s. 138 N.I. Act would thus be as under:

Step I: On the day complaint is presented, if the complaint is accompanied by affidavit of complainant, the concerned MM shall scrutinize the complaint & documents and if commission of offence is made out, take cognizance & direct issuance of summons of accused, against whom case is made out.

Step II: If the accused appears, the MM shall ask him to furnish bail bond to ensure his appearance during trial and ask him to take notice u/s. 251 Cr.P.C. and enter his plea of defence and fix the case for defence evidence, unless an application is made by an accused under section 145(2) of N.I. Act for recalling a witness for cross examination on plea of defence.

Step III: If there is an application u/s. 145(2) of N.I. Act for recalling a witness of complainant, the court shall decide the same, otherwise, it shall proceed to take defence evidence on record and allow cross examination of defence witnesses by complainant.

Step IV: To hear arguments of both sides.

Step V : To pass order/judgment."

8. Further relied upon a case of Vinod Kumar Vs. State of Punjab , wherein the Hon"ble Supreme Court held as under:

"41.... We have expressed our agony and anguish the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is

sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurize the witness and to gain over him by adopting all kinds of tactics. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial to be guided by the 4 Page 48 mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It 4 Page 49 is anathema to the concept of proper and fair trial. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute."

9. The fact remains that in the present case, notice was served on 03.03.2015 and in the notice itself, petitioners plead not guilty and disclosed their defence that they had already paid the cheque amount. Thereafter, on 17.04.2015 they moved an application under Section 145 (2) NI Act which was listed on 24.04.2015. However, since the lawyers were on strike on that day, the aforesaid application could not be decided. Thereafter, the matter was straightway adjourned to 24.06.2015.

10. The above facts does not establish that the petitioners had taken any steps to delay the matter. Moreover, the Court trial court is also dealing this matter on a priority basis.

11. It is always the endeavour of the Court to do justice and not decide the case in a hurried manner. In the present case, only witness is the complainant, who has not been allowed to be cross-examined. Therefore, it will certainly prejudice the rights of the petitioners.

12. I am conscious about the fact that the application under Section 145 (2) NI Act was moved by the petitioners belatedly and when the Court asked the petitioners to cross-examination the complainant, his Counsel was not available in the Town.

13. Keeping in view the facts and circumstances of the case, I set aside the impugned order dated 08.07.2015 and opportunity is granted to the petitioners to cross-examine the complainant subject to cost of Rs. 1,00,000/- to be paid in favour of the respondent/complainant.

14. Accordingly, the petition is allowed.

15. I hereby make it clear that the trial court shall give an opportunity to the petitioners to cross-examine the complainant and the petitioners request, if any, for the adjournment will not be entertained by the Trial Court.

Crl. M.A. 10405/2015

Dismissed as infructuous.