

(1998) 06 CAL CK 0028
In the Calcutta High Court

Case No : Criminal Revisional Jurisdiction C.R.R. No. 601 of 1998

NEPC Micon Limited and Others

APPELLANT

Vs

Magma Leasing Limited

RESPONDENT

Date of Decision : 15-06-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 219, 219(1), 258, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 139, 140, 141, 142

Citation : (1998) 2 CALLT 505 : (1999) 2 CivCC 459 : (1999) 1 RCR(Criminal) 754

Hon'ble Judges : Sidheswar Narayan, J

Bench : Single Bench

Advocate : S.K. Kapoor, Mr. S. Dubey and Mr. Y. Dastoor, for the Appellant; Mr. Sekhar Bose, Mr. Milon Mukherjee and Mr. Srenik Singhvi, for the Respondent

Judgement

S. Narayan, J.—This revisional petition being one u/s 402 of the Code of Criminal Procedure is directed against an order dated December 10. 1997 passed by the learned Metropolitan Magistrate, 9th Court, Calcutta in complaint case No. C-494 of 1997 u/s 138 read with section 141 of the Negotiable instruments Act, 1881, whereby the prayer of the petitioners-accused persons by discharging them u/s 258 of the Code of Criminal Procedure was rejected on contest. The complainant-O.P. being a limited company under the Companies Act, 1956 had its registered office at 24, Part Street, Calcutta-700 016 (i.e. within the jurisdiction of Calcutta, West Bengal) and had also a Branch Office at Haddous Road, Nungambakkam. Chennai-600034. The complainant O.P. was a financial institution, inter alia, providing fund for Hire purchase of machineries and other assets for business concerns. The complaint in the case was filed by the Assistant Manager (Legal and Administration) as an authorised representative of the O.P. company. it was alleged in the complaint that the petitioner-accused Nos. 2 to 8 were incharge of management of the day-to-day affairs of the NEPC Micon Limited, being petitioner-accused one and were also controlling the affairs of the said company. it was alleged that in discharge of his existing liability, the O.P.-company

tendered as many as five cheques dated 1.1.97 for various amount, the total being Rs. 58,25,980/- to the petitioner-company (accused No. 1) drawn on Canara Bank, Broadway Branch, Madras-600108 in favour of the O.P.-company (the complainant). Those cheques were duly tendered by the O.P.-company to their banker, Punjab National Bank, Park Street Branch. Calcutta for encashment but those cheques were returned by the banker of the accused persons I.e. Canara Bank, Broadway Branch, Madras with the remark as "account closed". The O.P.-company, thereafter, issued notices upon the accused persons on 14.1.97 through their advocate demanding payment of the total sum of the dishonoured cheques within 15 days from the receipt of the notice. The accused-company as well as their Directors (I.e. the petitioners) received the notice on 17.1.97, but, on expiry of the statutory period of 15 days, they neglected and failed to pay the amount of the dishonoured cheques. Hence was the necessity to prosecute the petitioners-accused persons for the offence punishable u/s 138 of the Negotiable instrument Act, 1881.

2. The petitioners-accused persons after having entered into appearance in the proceeding before the Court below filed a petition for discharge u/s 258 of the Code of Criminal Procedure. Upon hearing both the parties, the learned Metropolitan Magistrate passed the impugned order by rejecting the prayer as such, the petitioners feel aggrieved of the said order and have therefore, come up with the instant revisional petition.

3. The first and foremost point of challenge as contended on behalf of the petitioners was want of jurisdiction to entertain the proceeding-in-question by the Metropolitan Magistrate, Calcutta and, in this context, it was contended that the underlying agreements of hire purchase between the parties with regard to which the relevant cheques had been drawn and handed over to the O.P.-Company, had been made at Chennai (Madras) and not in Calcutta (West Bengal). it was further pointed out that the relevant cheques were drawn on Canara Bank, Broadway Branch. Madras and, it was thus contended that the alleged dishonour (bouncing), if at all any such was there, was at Chennai (Madras) and not in Calcutta (West Bengal). Yet another point, highlighted was that with respect to some other such cheques having been dishonoured, the O.P.-Company had instituted criminal cases being C.C. No. 6339 of 1996 of and C.C. No. 6341 of 1996 in the Court of Metropolitan Magistrate, Saldapet, Chennai, and that being as such, the O.P./Complainant should have chosen the forum at Chennai and not in Calcutta.

4. With reference to the above plea, it would be apt Just to refer to the hard fact that the O.P. Company had its registered office at 24, Park Street, Calcutta-700016 and the correspondence including the notice between the parties had been made with the address of the O.P. Company at the Head Office i.e. at Calcutta, as referred to above. Thus even on own admission of the petitioners-accused, he (accused) addressed the office of the O.P. company at Calcutta with reference to alleged dishonour of cheques. it would not be out of

place to mention here that it is not only the place of the drawee bank (on which the cheques were drawn), which matters in a proceeding u/s 138 of the Negotiable instrument Act, rather the underlying concept to constitute the said offence does incorporate yet another aspect subsequent to dishonour of the cheque and this was that the drawer of the cheque is served with a statutory notice to make payment within 15 days of the service of the notice after once the cheque is dishonoured. The drawer of the cheque is, thereupon, expected to respond to the notice and to make payment of the relevant cheque to the person in whose favour the cheque had been issued. This aspect of the matter is relevant to constitute an offence u/s 138 of the Negotiable instrument Act because it casts a statutory liability on the drawer of the cheque to approach the creditor after receiving the notice and to settle the claim. Here arises an inbuilt liability of the drawer as per the well-known established principle that a debtor should follow the creditor, and not the reverse, after the cheque is bounced and a notice of demand had been served. To put in other words, if one part of the occurrence i.e. dishonour of cheque on the drawee bank was at Chennai (Madras), the other part of the occurrence being the liability of the debtor to follow the creditor and to make payment was at the place from where the notice was issued or the place where the Head office of the creditor situated, which was admittedly in Calcutta. Banking upon this sort of established principle, it has got to be determined that a part of the occurrence as alleged did take place within the territorial Jurisdiction of Metropolitan Magistrate Calcutta. A similar view was taken by this court on an earlier occasion in the case of Robin Jhunjhunwala v. L.C. Mohta & Ore., reported in 1997(1) CRN 390 and the same does apply in the instant case also. It is thus a question of choice for the complainant to launch the prosecution at any place where a part of the occurrence had taken place. Simply because the O.P.-company had launched the prosecution at Chennai with regard to some other cheques, it would not be debarred to choose the forum at Calcutta in the instant case. The contention with regard to point of Jurisdiction "raised on behalf of the petitioners accused, therefore must fail.

5. Next the petitioners-accused while not denying the issuance of the relevant cheques and the bouncing/dishonour thereof, have contended, inter alia, that those cheques were post-dated to ensure certain instalments arising out of hire purchase and that before the date of their presentation in the bank, they (accused) had already communicated to the O.P.-company and the concerned bank that the accounts in the drawee bank have been closed. On this factual score, it was contended that the instant case does not relate to a cheque having been dishonoured or bounced for want of adequate fund in an existing account of the drawer, rather it was a special case in which the account in the bank itself had been closed prior to the presentation of the cheque and, therefore, no question arises of bouncing of the cheque.

6. I am sure, the contention raised in the preceding paragraph should not detain us much because very recently the Supreme Court while deciding a case, M/S Modi Cements Limited Vs. Shri Kuchil Kumar Nandi, laid down the ratio in most

uncertain terms that if a cheque is once issued by the drawer, the subsequent notice by the drawer to the drawee or to the bank for stoppage of payment would not preclude action u/s 138 of the Negotiable instrument Act by the drawee. An extract of the decision as given below would make the position all the more clear :--

"Once the cheque is issued by the drawer a presumption u/s 139 in favour of holder must follow and merely because the drawer issues a notice to the drawee or to the Bank for stoppage of the payment it will not preclude an action u/s 138 by the drawee or the holder of a cheque in due course. Sections 138 to 142 of the Act promotes the efficacy of banking operations and to ensure credibility in transacting business through cheques. it is for the reason the observation in 1996 AIR SCW 840 to the effect "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" does not fit in with the object and purpose for which above chapter has been brought on the Statute Book."

7. The ratio decided as above would certainly negative the plea as raised on behalf of the petitioner-accused, it would not be out of place also to refer a decision of Bombay High Court in the case of Shivendra Sansguiri v. M/s. Adineo & Anr. reported in 1996 Cr LJ, J816. it was held therein that it is not necessary that in order to come under the ambit of section 138 of the Negotiable instrument Act, there must be a bank account alive at the time of presentation of cheque in bank. Here I may mention without risk of repetition that the effluence u/s 138 of the Negotiable instrument Act had two aspects of the matter, one with regard to the dishonour of the cheque and the other with regard to neglecting to discharge the liability upon the statutory notice issued thereafter.

8. The closing of bank account is most certainly an unilateral act on the part of the debtor who is more prone to do it in the event he chooses to defy the claim of the creditor. That being as such, if a debtor undertakes up to certain amounts with regard to a liability by issuing a cheque which is valid in all respect at the time when it was issued, the claim of the creditor should not be negated by an unilateral act of closing the bank account prior to its presentation. If a debtor avoids to discharge with the liability which he has undertaken to discharge by issuing the cheque, a criminal liability does prima facie arise u/s 138 of the Negotiable instrument Act.

9. Moreover, since the offence u/s 138 of the Negotiable instrument Act relates only to the dishonour of the cheque and negligence to pay the amount of the cheque upon a subsequent statutory notice, the parties can not be relegated back to the underlying transaction with respect to which the cheque was issued. The dispute between the parties with regard to the agreement which persuaded the issuance of cheque is a matter apart, which has to be determined quite

independently in a civil proceeding and, in fact, in this case it transpired from the contentions raised that the parties had gone to litigate their contentions with regard to the hire-purchase agreement through a separate proceeding of the civil nature but the issue to be determined in that proceeding would be most certainly quite different from the present criminal proceeding.

10. Yet another point raised in this revision for discharge of the petitioner-accused was that the pending prosecution before the Court below was with regard to as many as five transactions of issuance of cheques of various amount. All the cheques were, however, of the same date and between the same parties, the drawee bank also being the same, and hence in terms of (he provision u/s 219(1) of the Code of Criminal Procedure if a person is accused of more offence than one of the same kind committed within the space of 12 months from the first to the last of such offences may be charged with and tried at one trial for any number of them not existing three. This is a point which, in my considered opinion, will not entitle the petitioners-accused to an order of discharge for the criminal liability arising out of all the cheques. An irregularity, even if it be there with the accusation or the framing of charges, would not entitle the accused from complete exoneration of such accusation or charges. if a question is actually raised of any prejudice to the accused, the same has to be considered by the court during the course of the trial. in this context, one has to also bear in mind some other factual score that there was only one statutory notice issued by the O.P.-Company to enforce payment of the amount covered by those five cheques. in any view of the matter, the contention of the petitioners-accused on this score had no substance to procure an order of discharge.

11. Lastly, it was urged by the counsel for the petitioners that the complaint filed by the O.P.-Company was not from the Managing Director/ Directors of the Company and, that being as such, it was not entertalnable. in this regard, however, my attention was drawn to the very first paragraph of the complaint, which speaks that the complaint/petitioner was the Assistant Manager (Legal and Administration) and was authorised representative and had been duly authorised by the company i.e., M/s. Magma Leasing Limited of 24, Park Street, Calcutta to file the complaint before the court The authority letter was "supposed to have been annexed with the complaint. That being as such, I do not think that the complaint was to be rejected for want of authority as contended on behalf of the petitioners. The authority letter was, of course, subject to examination during, the course of trial.

For the reasons aforesaid, this revisional petition has no merit and, accordingly, it must fail. This revision is thus dismissed. There shall be, however, no order as to costs.

12. Revision Petition dismissed