

(2024) 01 JH CK 0022

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2488 Of 2013

Nitin Raj And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 08-01-2024

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138, 141, 141(2)

Citation : (2024) 01 JH CK 0022

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Sonal Sodhani, P.D. Agarwal, P.A.S. Pati

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Ms. Sonal Sodhani, learned counsel for the petitioners, Mr. P.D. Agarwal, learned counsel for the State and Mr. P.A.S. Pati, learned counsel for opposite party no.2.

2. This petition has been filed for quashing of the entire criminal proceeding including the order taking cognizance dated 12.04.2013 arising out of Complaint Case No.2298 of 2012, pending in the Court of the learned Judicial Magistrate, 1st Class, Ranchi.

3. The complaint case was filed against five named accused persons including the petitioners, who have been placed as accused nos. 4 and 5 alleging therein that on the request and application of the accused persons, the In-charge of Punjab National Bank, Kishoreganj, Ranchi sanctioned Rs.25,00,000/- under cash credit scheme and term loan and further Rs. 40,00,000/-, total Rs.65,00,000/- was sanctioned to the accused persons Companies and the accused Nos.3 to 5 as a Director of the Company availed cash credit facilities and term loan limit. It was alleged that in the acknowledgment of the said loan facilities, the accused executed various documents at Punjab National Bank, Kishoreganj in favour of

the complainant and agreed to give with interest and cost. It was further alleged that the operation of the said cash credit account and term loan was not proper and not in accordance with the terms of the limit sanctioned the accused willfully failed and neglected to submit the monthly stock statement and deposit the daily sale proceeds and monthly stock installment thereof as such both the account became highly irregular. Subsequently, both the accounts have been declared as NPA on 31.03.2011 for Rs.69,69,561.50/-plus. Later on, one Jigyasu Nath Sahi i.e. Accused no.3 issued a cheque dated 20.10.2012 for Rs.10 Lakhs to the complainant. It was also alleged that the aforesaid cheque of Bank of India, Kanta Toli Branch was presented in Punjab National Bank, Argora Branch for clearing, but the aforesaid cheque is returned unpaid by the Bank with reason 'insufficient fund' and this fact was intimated to the complainant by the bank's intimation. It was further alleged that the accused no.3, Director of the company has mischievously and deliberately issued the above mentioned with ulterior motive. It was also alleged that on account of dishonour of the said cheque, the accused persons as Directors of the company, have deliberately committed an offence. It was also alleged that the complainant has sent a legal notice through its Chief Manager dated 02.11.2012 registered on 05.11.2012 and asked the accused persons to repay the amount, but the accused in spite of receiving of the said notice neither gave any reply nor made any payment.

4. Ms. Sodhani, learned counsel appearing for the petitioners submits that the allegations are made of dishonour of cheque against the company, namely, M/s Sonpura Estate Private Limited. She submits that these two petitioners were not drawer of the cheque in question. The case is arising under Section 138 of the Negotiable Instruments Act. She further submits that there are no averment in the entire complaint case about the role played by these two petitioners and in view of that, Section 141 of the Negotiable Instruments Act is attracted. She also submits that the case of the petitioners is fully covered in view of the judgment passed by the Hon'ble Supreme Court in the case of Sunita Palita and others v. Panchami Stone Quarry, reported in (2022) 10 SCC 152. Paragraph 29 of the said judgment is quoted hereinbelow:

"29. As held in K.K. Ahuja v. V.K. Vora [K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48 : (2009) 4 SCC (Civ) 1 : (2010) 2 SCC (Cri) 1181] when the accused is the Managing Director or a Joint Managing Director of a company, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company for the conduct of the business of the company. This is because the prefix "Managing" to the word "Director" makes it clear that the Director was in charge of and responsible to the company, for the conduct of the business of the company. A Director or an officer of the company who signed the cheque renders himself liable in case of dishonour. Other officers of a company can be made liable only under sub-section (2) of Section 141 of the NI Act by averring in the complaint, their position and duties in the company, and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence."

5. Relying on the above judgment, she submits that these petitioners are not signatories and in view of the said judgment, the case of the petitioners is fully covered.

6. Mr. Pati, learned counsel appearing for opposite party no.2 submits that the company is the party and these two petitioners, who are also Directors of the said company including the person who has signed the cheque in question are also party in the complaint case. He submits that the case is made out.

7. Mr. Agarwal, learned counsel for the State accepts the submission of Mr. Pati, learned counsel for opposite party no.2.

8. It is an admitted fact that the case is arising under Section 138 of the Negotiable Instruments Act and for dishonour of the cheque in question, the complaint case has been filed. In the complaint case, there is no averment about the role played by these two petitioners. The allegations are made that these two petitioners are Directors of the said company. Admittedly, the person, who has signed the cheque in question, is not the petitioner in the present case. If such a situation is there, the judgment relied by the learned counsel for the petitioners in the case of Sunita Palita (supra) is helping the petitioners. In view of that, the requirement of Section 141 of the Negotiable Instruments Act is not fulfilled, so far as these petitioners are concerned.

9. Accordingly, the entire criminal proceeding including the order taking cognizance dated 12.04.2013 arising out of Complaint Case No.2298 of 2012, pending in the Court of the learned Judicial Magistrate, 1st Class, Ranchi are quashed.

10. This petition is, therefore, allowed in above terms.

11. It is made clear that this Court has not interfered with the order taking cognizance, so far as accused nos. 1, 2 and 3 are concerned and the learned Court will proceed, in accordance with law.