(2019) 12 P&H CK 0306

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 40988 Of 2019 (O&M)

Pankaj Gupta And Another APPELLANT

Vs

Dhare Singh Punia RESPONDENT

Date of Decision : 13-12-2019

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138, 141
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2019) 12 P&H CK 0306

Hon'ble Judges : Amol Rattan Singh, J

Bench : Single Bench

Advocate : Sahil Gupta, Rao Ajender Singh

Final Decision : Dismissed

Judgement

Amol Rattan Singh, J

By this petition the petitioners seek quashing of the complaint instituted by the respondent invoking therein the provisions of Sections 138 and 141 of the Negotiable Instruments Act, 1881. Naturally, the quashing of the complaint is sought only qua the two petitioners herein (with them being respondent Nos.3 and 4 in the complaint), the first two respondents being M/s M City Infrastructure Pvt. Ltd., through its Director, Sudhir Mohan, and Sudhir Mohan himself, respectively.

The petitioners, Pankaj Gupta and Hans Raj Gupta, are also shown to be Directors in the said company, as per the complaint.

A perusal of paragraphs 1, 2 and 3 of the complaint (copy annexure P-1), reveals that all the four accused in the complaint are alleged to be involved in the day to day affairs of the first accused, i.e. the company, with them having knowledge of all such affairs and that all of them represented to the complainant that they have a clear title to the shop complex that the company wished to sell; and acting on that alleged assurance given, the respondent-complainant is stated to have paid a sum of Rs.11 Lacs for the purchase of a kiosk in the project being undertaken by the company, but with the possession of the kiosk not having been given. Thereafter the petitioners and their co-accused are alleged to have issued a cheque for a sum of Rs.11 Lacs in favour of the complainant, which as per case of the complainant, was dishonored, leading to the institution of the complaint.

When the petition initially came up for hearing on September 23, 2019, learned counsel for the petitioner had contended that the petitioners are non-executive directors in the company and have nothing to do with the day to day functioning of the company, with them in any case not being either signatories to the agreement entered into between the company and the respondent, or signatories to the cheque.

On that contention, notice of motion had been issued and upon learned counsel for the respondent having put in an appearance and having addressed arguments, the matter had been adjourned till today for final arguments, with the personal appearance of the petitioners before the trial Court stayed till today. On the last date of hearing, learned counsel for the petitioner had relied upon a judgment of the Supreme Court in National Small Industries Corporation Limited vs. Harmeet Singh Paintal and another, 2010(2) RCR (Criminal) 122, from which he had pointed to paragraph 9 thereof which reads as follows:

Learned counsel for the respondent on the other hand had relied upon another judgment of the Supreme Court, in Gunmala Sales Private Limited vs. Anu Mehta and Others, 2015(1) RCR (Criminal) 54, with him submitting that once an averment is made in the complaint to the effect that the accused were actually involved in the daily affairs of the company, the onus is upon the accused to show that they were not involved in running the day to day affairs of the company.

Today, learned counsel for the respondent, from that judgment, points to paragraph 30 thereof, wherein it was held as follows:

"30. When in view of the basic averment process is issued the complaint must proceed against the Directors. But, if any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling uncontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be abuse of the process of court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking.

For quashing of a complaint it must be shown that no offence is made out at all against the Director."

Learned counsel for the petitioner on the other hand relies upon various judgments including one in Sabitha Ramamurthy and another vs. R.B.S.Channabaasavaradhya 2006(4) RCR (Criminal) 295, and in fact also to the reference made in paragraph 16 of the judgment in Gunmalas' case (supra) to the earlier judgment in S.M.S.Pharmaceuticals Ltd. Vs. Neeta Bhalla and Anr 2005 R.C.R.(Criminal) 141, from which he points to paragraph 8 which reads as follows:

"8 To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the directors are in-charge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still, in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable."

He therefore, submits that simply because the petitioners are directors in the company, i.e. accused No.1 before the trial Court, would not mean that they are vicariously liable for any action taken by any other director in the company, even in terms of Section 141 of the Act of 1881.

Learned counsel next relies upon the judgment in the case of S.M.S.Pharmaceuticals Ltd.'s case (supra), from which he points to the following two sub-paragraphs of para 21:-

"(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases."

Learned counsel for the petitioner has also relied upon the judgment in Standard Chartered Bank Vs. State of Maharashtra and others Etc. 2016 (2) R.C.R. (Civil)

818, in support of his argument. Having considered the matter, what is to be first seen is that in the Gunmala case (supra), their lordships had considered the ratio of the aforesaid judgments IN EXTENSO (except Standard Chartered), along with other judgments on the subject, and have thereafter held as above in paragraph 30 thereof.

Eventually, it had been concluded that if a petition is filed under Section 482 of the Code of Criminal Procedure for quashing a complaint instituted under the provision of Sections 138 and 141 of the Act of 1881 before a High Court, the High Court may refuse to quash the complaint if the complaint contains a basic averment which is sufficient to make out a case against the director.

However, it has also been held that despite the presence of a basic averment, the complaint may be quashed because of the absence of more particulars about the role of the director in the complaint.

It has also been observed by their Lordships as follows:-

"33...

It may do so having come across some unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the Court."

Thereafter, it has been further held as follows:

"It bears repetition to state that to establish such case unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;"

In the case of Standard Chartered Bank (supra), in fact, essentially the ratio of the judgment in Gunmalas' case (supra) was upheld, as would be clear from a perusal of paragraphs 27 to 29 of that judgment (Law Finder Id # 756142), which paragraphs for the sake of brevity are not being reproduced herein.

Consequently, though undoubtedly only bald averments in paragraphs 1 to 3 of the complaint have been made and no further material has been brought to the notice of this Court that the petitioners are actually involved in the day to day functioning of the company (that has been arraigned as the first accused in the complaint), yet conversely, the petitioners have also not placed even before this Court, any material to show that they are not involved in any manner in the day to day affairs of the company, apart from a bare assertion to that effect, further stating that they are not signatories to the agreement, or to the cheque in question.

Whereas they not being signatories to the agreement and cheque may otherwise be an indicating factor to the effect that they are not involved in the day to day functioning of the company; however, in the opinion of this Court, seen in the light of the ratio in Gunmalas' case, that cannot be taken to be the sole criterion to quash the complaint.

Consequently, this petition is dismissed.

However, simply keeping in view the age of petitioner no.2, which is shown to be 76 years old in the petition, not denied by the counsel for the respondent, the trial Court is directed that it would not insist upon the personal presence of the said petitioner before that Court, except when absolutely necessary.

Learned counsel for the respondent submits that even the complainant is 69 years old and therefore the trial Court may be directed to conclude the trial within a very reasonable period, it having remained pending since 2017 and the petitioners not having appeared till now. That contention is considered reasonable and consequently, the trial Court is directed to ensure that the complaint is decided expeditiously, and not later than one year from today. If the counsel before that court seek unnecessary adjournments, such would not be granted, except with heavy costs imposed.