
(2010) 09 DEL CK 0416

In the Delhi High Court

Case No : Criminal M.C. No. 117 of 2008 and Criminal M.A. No. 489 of 2009

Paragon and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 1 Crimes 576

Hon'ble Judges : S.L. Bhayana, J

Bench : Single Bench

Advocate : Vijay Aggarwal, for the Appellant; Navin Sharma and V.K. Sidharthan, for R-2, for the Respondent

Judgement

S.L. Bhayana, J.—The present petition has been filed by the petitioners u/s 482 Cr.P.C. with a prayer that the summoning order dated 13.12.2001 passed in criminal complaint case No. 4918/1/04 u/s 138 of N.I Act 1881 pending before the Trial Court be quashed.

2. Learned Counsel for the petitioners submits that the impugned order dated 13.12.2001 has been passed by the Trial Court without application of mind and the same is liable to be set aside. He further submits that the cheques in question were given by the petitioners to the complainant as security and these were not issued in order to discharge any liability and, therefore, the petitioners have wrongly been summoned by the learned Trial Court. In support of his case, learned Counsel for the petitioners has relied upon the judgment titled "Exports India and Anr. v. State and Anr. 137 (2007) DLT 193.

3. On the other hand, learned Counsel for respondent No. 2 submits that the present petition is completely absurd and has been filed with malafide intentions. He further submits that the impugned summoning order was passed by the learned Trial Court on 13.12.2001, whereas, the quashing of the same is filed by way of present petition only on 14.1.2008 that is after about seven years, which

is absolutely abuse of process of law and, therefore, the present petition is liable to be dismissed with exemplary costs.

4. I have heard the arguments from both the parties.

5. I have gone through the criminal complainant filed by the respondent No. 2/ complainant. In the said criminal complainant, it is mentioned that the complainant company received an order for supply of 37062 pieces of Mens Cotton Sweaters from America, USA. The complainant company used to manufacture these items and used to export the same to U.S.A. The complainant company has opened a Letter of Credit No. L-156309 dated 05.6.1999 and complainant company and accused nos.1 to 3 through accused No. 4 entered into a joint venture agreement dated 23.6.1999. The petitioners undertook to get the sweater making job done in terms of the agreement. The complainant company was to provide finances to carry out the job of manufacturing sweaters under the said joint venture business. The complainant company spent Rs. 46.63 lacs, which includes cost of yarn and it was supplied to the petitioners. The first consignment of 5928 pieces were shipped to America, USA on 30.9.1999 and a payment of Rs. 12.89 lacs were received therefrom. But, since the petitioners had failed to supply the remaining consignment in time and there was continuous delay on the part of the petitioners, the buyers in USA cancelled the order.

6. The petitioners issued a cheque to the complainant company bearing No. 216505 dated 20.9.1999 for Rs. 33,33,951 drawn on State Bank of Patiala, Bharat Nagar Chowk Branch, Ludhiana covering the value of LC and other expenses, which was dishonoured on presentation. They also issued two further cheques for Rs. 7.50 lacs on 07.4.2000 and Rs. 15 lacs on 30.4.2000 but all the cheques on presentation were dishonoured by the Bankers of the petitioners.

7. On dishonourment of abovesaid cheques, a legal notice was served upon the petitioners but no payment was made by them to the complainant company.

8. A similar issue came up for consideration before this Court, in the case of "Rajesh Agarwal v. State and Anr" in Crl. M.C. No. 1996/2010 & Crl.M.A. No. 7672/2010, wherein it has been held as under:

18. In all above Criminal miscellaneous petitions, the petitioners have come to this Court raising one or the other defence. I consider that since summoning order in all these cases have been issued, it is now the obligation of these petitioners to take notice u/s 251 of Cr.P.C., if not already taken, and enter their plea of defence before the concerned MM court and make an application, if they want to recall any witness. If they intend to prove their defence without recalling any complainant witness or any other witness, they should do so before the Court of MM. These petitions are, therefore, hereby dismissed.

19. The petitioners shall appear before the Court of concerned MM and trial shall proceed as stated above.

9. Keeping in view the law laid down by this Court in the aforesaid judgment, the

petitioners are directed to appear before the Court of MM and take notice u/s 251 Cr.P.C., if not already taken and enter their plea of defence before the concerned Court of MM and make an application if they want to recall any witness and they can take all the defences before the concerned Court of MM.

10. With these observations, the present petition alongwith pending application stands dismissed with costs of Rs. 10,000/- to be paid to the respondent/complainant company before the Trial Court, within one month from the date of the appearance of the petitioners before the Trial Court. In case the petitioners fail to pay the imposed costs to the respondent/complainant company, the Trial Court is directed to recover the same from the petitioners as per law.

11. The petitioners are directed to appear before the Trial Court on 30.09.2010.