
(2007) 02 DEL CK 0177

In the Delhi High Court

Case No : Criminal M (C) No. 638 of 2005

Penorama Overseas Pvt. Ltd. and Others

APPELLANT

Vs

Grasim Industries Ltd.

RESPONDENT

Date of Decision : 23-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 420

Citation : (2007) 95 DRJ 542

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Rajesh Chug, for the Appellant; R.R. Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—This present petition is preferred for recall of the summoning order dated 06.12.2001 of the Ld. Metropolitan Magistrate, on a Complaint filed by the Respondent (hereafter "the complainant") and quashing of criminal proceedings.

2. The facts necessary to decide this petition are that the complainant M/s. Grasim Industries, instituted a complaint u/s 138 Negotiable Instruments Act read with Section 420 IPC. The Petitioners approached the Complainant on 22.08.2001 for payment of rent of a plot to Haldia Dock Complex through handling agent M/s Lee & Muirhead Ltd. They issued a cheque in the sum of Rs. 14, 50,000/-, for repayment of liability.

3. The complaint alleged that upon presentation the said cheque was dishonoured. The respondent alleged that it issued a notice and asked petitioner to make payment within 15 days, but the latter failed to do so. A complaint was filed against the petitioners before the Metropolitan Magistrate; they were issued with a summoning order.

4. The Petitioners avers that M/s. Sun Overseas alleged to have good relations with suppliers of Bitumen in Iran and was desirous of associating with international trading houses for import of the goods to India, for supply to Road Construction Companies and, Therefore, introduced the petitioner company to the respondent for Bitumen business in India. The parties entered into a Memorandum of Understanding (MOU).

5. The Petitioners further aver that they originally placed an order upon the Complainant Company dated 10.05.2001 and 12.05.2001 for the supply of 3000 MT of Bitumen to be shipped to JNPT port Mumbai and the final destination to be ICD Sanathnagar, Hyderabad. This order was accompanied with a cheque dated 11.05.2001 for Rs. 14,50,000/-, the subject cheque being 10% margin money. The cheque was allegedly enclosed with an instruction letter that it be presented on instructions by the petitioner company.

6. It is contended by Mr. Siddarth Mridul, learned senior counsel that the other order dated 12.05.2001 was for the supply of 7000 MT of bitumen to Chennai which was later altered for supply to be effected to Haldia Port in West Bengal, accompanied with a DD favoring Responding company, for Rs. 43 lakhs. The petitioners allege that the Respondent company had agreed to hold the cheque of Rs. 14,50,000/-.

7. Mr. Mridul contends that the total quantity of bitumen to be imported was 9000 MT. The complainant directed the Petitioners to release the balance money of Rs. 24 lakhs and they did so. It was submitted even that after receiving the margin amount, the complainant did not return Rs. 14,50,000/-. The counsel submitted that the Petitioner has filed a recovery suit against the respondent. It is urged that the Respondents admitted that they accepted the cheque for Rs. 14,50,000/-, and as a result, there was no legal liability or enforceable debt; consequently the criminal proceedings were not maintainable.

8. The Respondent contends that the Petitioner convinced it that it had excellent contacts with buyers for bitumen upon which a Memorandum of Understanding ("MOU") was entered into between the parties; and M/s. Sun Overseas M/s. Sun Overseas had introduced the petitioner to the respondent and it undertook to arrange for bitumen in Iran. As per the said MOU, the Petitioner was to find buyer of bitumen in India and accordingly placed orders on the complainant. The Petitioner was to remit an advance payment of 10% of total value of such order to the Respondent and M/s. Sun Overseas arranged for bitumen in Iran on an order placed by the Petitioner.

9. Mr. R.R. Kumar, learned Counsel, relying on the statements in the counter affidavit of the complainant submitted that in terms of MOU, the petitioner placed two purchase orders (2000 MT & 7000 MT) for importing 9000 MT of bitumen on 10.05.2001 and 12.05.2001. The petitioner company represented to the Respondent that they had firm supply orders from its client. The value of the orders was Rs. 7.140 crores. Therefore, the advance margin money payable by

the Petitioner Company to the Respondent Company was Rs. 71.40 lakhs. However, the Petitioner Company remitted a sum of Rs. 67 lakhs only as advance margin money. It was urged that when the consignment arrived in India, the Petitioner on one or another pretext started delaying in lifting the cargo; and ultimately the Respondent Company, which had invested 90% stake in the said business, was forced to sell it to alternative buyer at net loss to mitigate the over all loss. Since the arrival of bitumen in India and till it was sold to alternative buyer, the Petitioner Company kept on promising to find buyers, sell it and pay all the incidental and other expenses incurred by the Respondent Company during the period.

10. It was further contended on behalf of the respondent that due to the acts of the Petitioner it incurred expenses of Rs. 61.14 lakhs by way of payment made to cargo handling agent; the petitioner company however remitted a sum of Rs. 2.12 lakhs only in that regard. The respondent further incurred an expense of Rs. 28.19 lakhs. Therefore, the net outstanding liability of the petitioner company towards the respondent company is Rs 91.61 lakhs.

11. It was submitted and averred that the disputed Cheque of Rs. 14.50 lakhs was forwarded to the complainant by the Petitioner Company with an instruction that the same was "payment of 10% advance for 2000 MT"s and also our future quantity". The Respondent was instructed that it be sent for encashment on the instruction of the petitioner Company, which was expecting payment from its clients PEC Ltd., within a week. When no such instruction came from the Petitioner Company, the Respondent kept it as "payment-on-account" for further quantity to be ordered by the Petitioner Company .

12. The counsel contended that in these circumstances, the respondent complainant was entitled to encash the cheque. Counsel also submitted that the claim for a quashing order is without legal foundation, as the dispute cannot be decided by the Court only on the basis of affidavits, and that the complaint as well as materials on record justified a summoning order and full trial.

13. The question which arises is whether, the disputed cheque for Rs. 14.50 lakh, which was not honoured, could lead to criminal complaint.

14. The commercial nature of the transaction, by which the Petitioner issued the cheque is not denied by either party. The question raised is whether the averments in this case - to a considerable degree, the pleadings in the suit instituted, being relied upon by the Petitioner, can lead to the inference that the continuation of criminal proceedings is unwarranted. The issuance of cheque, the surrounding circumstances pleaded by the Petitioner (i.e its being margin money and Therefore not liable to encashment, whether the underlying consideration had been performed, etc.) are pure questions of fact - some are matters of defense.

15. The limits of the High Court's jurisdiction u/s 482, Cr.P.C. in proceeding to quash criminal proceedings are well defined. Unless the FIR/complaint does not

disclose the ingredients of the offence, or the proceedings are proved to be mala fide, or barred by some law, the Court, in exercising such power, would be loathe to interfere in the conduct of inquiry or trial. In this petition, whether the complainant was justified, having regard to the circumstances, in presenting the cheque (which was ultimately returned) and the Petitioner, not liable, are facts and issues which can be conveniently raised, during the trial and gone into by the magistrate. This Court, in exercise of inherent power, would be side-stepping the process. I am satisfied that neither the complaint nor the summoning order has led to failure of justice, needing to be interfered under inherent jurisdiction.

16. In view of the above conclusions, the petition has to fail; it is dismissed.