

(2016) 02 SHI CK 0024
In the High Court Of Himachal Pradesh
Case No : CRMMO No. 148 of 2015

Rajeshwer Sabharwal and Others

APPELLANT

Vs

Royal Apple Merchants and Others

RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, Section 141, Section 142

Citation : (2016) 02 SHI CK 0024

Hon'ble Judges : Piar Singh Rana, J.

Bench : Single Bench

Advocate : R.K. Bawa, Senior Advocate and Jeevesh Sharma, Advocate, for the Appellant; B.S. Chauhan, Senior Advocate and Vaibhav Tanwar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Piar Singh Rana, J.—1. Present petition is filed under Section 482 of the Code of Criminal Procedure 1973 to set aside the Order dated 18.11.2013 passed by learned Judicial Magistrate Ist Class(3) Shimla H.P. whereby accused persons were summoned under Section 138 of the Negotiable Instruments Act 1881 by learned trial Court in case No. 193-3 of 2014/13/1410-3 of 2013 titled Royal Apple Merchants v. Shri Tara Business Group Private Limited and others.

Brief facts of the case

2. Royal Apple Merchants through its sole proprietor Satish Kumar Mehta filed a complaint under Section 138 read with Sections 141 and 142 of the Negotiable Instruments Act pleading therein that complainant is a fruit and vegetable commission agent and is performing business of apples. It is pleaded that accused persons No. 2 to 6 have formed a private limited company in the name of M/s. Shri Tara Business Group Pvt. Ltd. and accused persons No. 2 to 6 are directors of company and are actively participating in the business of company. It is further pleaded that accused persons No. 1 to 6 purchased apples from

complainant on credit basis on different dates w.e.f. August 2012 to October 2012 and assured the complainant that they would make regular payment. It is pleaded that accused persons No. 1 to 6 purchased 36952 apple boxes from the complainant to the amount of Rs. 4,90,80,459/- and paid only Rs. 1,68,10,000/- till 22.05.2013. It is further pleaded that accused persons are liable to pay an amount to the tune of Rs. 3,22,70,459/- to the complainant. It is further pleaded that complainant time and again requested accused persons to pay the amount but the accused persons did not pay the amount and ultimately accused persons issued a Cheque No. 629481 dated 15-06-2013 for an amount of Rs. 30,00,000/- (Thirty lacs). It is further pleaded that complainant submitted the cheque for encashment but the said cheque was dishonoured for want of sufficient funds in the account. It is further pleaded that thereafter complainant issued a legal notice to the accused persons but the accused persons did not pay the amount within the statutory period of notice. Complainant pleaded before the learned trial Court that accused persons be summoned and be punished in accordance with law. Complainant also pleaded before learned trial Court that compensation to the tune of double amount of cheque be also awarded. Learned trial Court on dated 18-11-2013 passed order and summoned the accused persons. Feeling aggrieved against the order of summoning the accused persons have filed the present petition under Section 482 of the Code of Criminal Procedure 1973.

3. Court heard learned Advocate appearing on behalf of the petitioners and non-petitioners and Court also perused the entire record. Following points arises for determination in the present petition.

"1. Whether petition filed under Section 482 of the Code of Criminal Procedure 1973 is liable to be accepted as mentioned in the memorandum of grounds of the petition?

2. Final Order."

Findings upon Point No. 1 with reasons:--

4. As per Section 204 of the Code of Criminal Procedure 1973 at the time of issuing process Magistrate should satisfy that there are sufficient grounds for proceeding against accused persons and if Magistrate is satisfied that there are sufficient grounds for proceeding then Magistrate would issue summons in summons cases and would issue warrant in a warrant case. Court is of the opinion that under Section 204 of the Code of Criminal Procedure 1973 satisfaction of the Magistrate is sufficient for proceeding.

5. Order of learned trial Court dated 18th November, 2013 is quoted in toto:--

"Office report seen. Let complaint be registered. Affidavit in preliminary evidence filed. Heard. Record perused. Keeping in view the averments made in complaint, affidavit of complainant in preliminary evidence and documents on record, there are sufficient reasons to proceed against the accused persons for the offence punishable under section 138 of the Negotiable Instrument Act. Let accused

persons be summoned for 7.2.2014."

6. Learned trial Court held in order dated 18-11-2013 that keeping in view averments made in complaint, affidavit of complainant in preliminary evidence and documents on record there are sufficient reasons to proceed against accused persons. It is well settled law that the Magistrate is not required to go into detailed discussion of merits and demerits of the case and it is also well settled law that the Magistrate is not required to weigh evidence meticulously at the time of issuance of process under Section 204 of Code of Criminal Procedure 1973. See *Nagawwa v. Veeranana Shivalingappa Konjalgi and others* , AIR 1976 Apex Court 1947 (DB). Also see *Chandra Deo Singh v. Prakash Chandra* , AIR 1963 Apex Court 1430 (Full Bench).

7. Submission of learned Advocate appearing on behalf of the petitioners accused that in the present case complainant did not prosecute company through its duly authorized natural person and on this ground petition filed under Section 482 of the Code of Criminal Procedure Code 1973 be accepted is rejected being devoid of any force for reasons hereinafter mentioned. Court is of the opinion that complainant has impleaded company Tara Business Group Pvt. Ltd. as co-accused No. 1. Complainant did not mention name of natural person through whom company is impleaded as co-accused No. 1 Court is of opinion that mistake is procedural mistake only. It is well settled law that procedural mistake can be rectified in the ends of justice in judicial proceedings at any stage of case.

8. Submission of learned Advocate appearing on behalf of the petitioner that prosecution of co-accused No. 2 to 6 is not permissible under law because co-accused No. 2 to 6 were not in-charge of company and where not responsible for conduct of business of company when alleged offence was committed and on this ground petition filed under Section 138 of the Negotiable Instrument Act 1881 be accepted is rejected being devoid of any force for reasons hereinafter mentioned. Above submission is issue of facts. It is well settled law that issue of facts in judicial proceedings is decided after giving due opportunities to both parties to lead evidence in affirmative and rebuttal manner. Same fact cannot be decided at this stage of case.

9. Even after issue of process in summon case accused persons can plead absence of any triable case and Magistrate on satisfaction has discretionary power to drop proceeding against accused persons. Order of issuing process is an interim order and not judgment. See *Awadhesh Prasad v. State of Bihar* , 1997 (3) Crimes 7070 Patna. See *K.M. Mathew v. State of Kerala and another* , 1992 (1) SCC 217. In view of above stated facts point No. 1 is answered in negative.

Point No. 2.(Final Order)

10. In view of finding on point No. 1 petition filed under Section 482 of the Code of Criminal Procedure 1973 is dismissed. The parties are directed to appear before the learned trial Court on 15-03-2016. Observations will not affect merits of the case in any manner and will strictly confine for disposal of petition filed

under Section 482 of Code of Criminal Procedure 1973. CRMMO No. 148 of 2015 is disposed of. Pending applications if any also disposed of.