(2011) 03 DEL CK 0164

In the Delhi High Court

Case No : Criminal M.C. No. 4378 of 2009 and Criminal M.A. 14989 of 2009 (stay) Criminal M.C. No''s. 78 and 79 of 2010 and Criminal M.A. 283 and 285 of 2010

Ravi Kumar D. APPELLANT

Vs

State of Delhi and Another RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2011) 03 DEL CK 0164

Hon'ble Judges : Ajit Bharihoke, J

Bench : Single Bench

Advocate : Wills Mathews and T.P. Sindhu, for the Appellant; Fizani Husain, APP for Respondent No. 1 and Sudhir Kumar Sangi, for the Respondent

Judgement

Ajit Bharihoke, J.—Ravi Kumar D., the Petitioner in above referred petitions u/s 482 Code of Criminal Procedure in his respective petitions has sought quashing of the complaints filed against him u/s 138 of the Negotiable Instruments Act (for short `N.I. Act'')by Respondent No. 2 M/s Iron Cementics (India) Pvt. Ltd for dishonor of three cheques for Rs. 25 lakhs each purportedly issued by him.

2. Briefly stated, facts relevant for disposal of these petitions are that the Petitioner is alleged to be the Managing Director of M/s. Mother India Logistics & Minerals Pvt. Ltd. dealing in the business of supply of machinery and spare parts.

3. Respondent No. 2 company placed an order for supply of machinery and spare parts on the company of Petitioner and gave a cheque of Rs. 90 lakhs towards advance payment. The company of the Petitioner, however, failed to deliver the machinery/spare parts and on this, the Managing Director of Petitioner company was approached. He expressed his inability to supply the machinery/spare parts and requested the representative of Respondent No. 2 company to treat Rs. 90 lakhs given as advance payment as loan. The Petitioner also issued a post-dated

cheque dated 06.03.2006 for Rs. 70 lakhs in favor of Respondent No. 2. The said cheque, on presentation, was dishonored by the drawee bank. On this, the Petitioner was again approached, who assured the representative of Respondent No. 2 that cheque be re-presented for encashment and it would be encased. In order to assure Respondent No. 2, the Petitioner also issued three cheques for Rs. 25 lakhs each respectively dated 06.05.2006, 21.05.2006 and 06.06.2006 in favor of Respondent No. 2 as security and stated that in the event of the cheque of Rs. 70 lakhs being dishonored, Respondent No. 2 may encase those three cheques given as security.

4. The cheque for Rs. 70 lakhs was again presented, but it was dishonored. On this, Respondent No. 2 served the company of the Petitioner as well as Petitioner with a demand notice u/s 138 N.I. Act, but the Petitioner failed to make the payment. Consequently, Respondent No. 2 was constrained to file complaint u/s 138 read with 141 N.I. Act against the Petitioner as well as the company.

5. Since the cheque of Rs. 70 lakhs was not honored, Respondent No. 2 also presented above three cheques of Rs. 25 lakhs each for encashment. Those cheques were dishonored by the drawee bank with the remarks "Account Closed". Respondent No. 2, therefore, served the Petitioner as well as his company with notices of demand u/s 138 N.I. Act in respect of above three cheques, but the Petitioner and his company failed to make payment. This resulted in the Respondent No. 2 filing three separate complaints on the basis of above said three dishonored cheques of Rs. 25 lakhs each being complaint case No. 1594/2009, 3633/2007 and 3622/2007. Learned Metropolitan Magistrate, on consideration of the complaint and the affidavit evidence of the complainant, summoned the Petitioner for undergoing trial in the aforesaid three complaints. Feeling aggrieved, the Petitioner has filed the above referred three revision petitions.

6. Learned Counsel for the Petitioner has contended that from the factual matrix of the case, it is apparent that the cheques in question were issued by the Petitioner from his personal account only as security and assurance to the effect that the cheque worth Rs. 70 lakhs issued by the Petitioner''s company M/s. Mother India Logistics & Minerals Pvt. Ltd. would be encased on its presentation to the drawee bank. Therefore, it cannot be said that the cheques in question were issued in discharge of some existing liability, as such Section 138 N.I. Act is not attracted in this case. Learned Counsel further argued that not only this, Respondent No. 2 has admittedly filed a complaint u/s 138 N.I. Act for dishonor of the aforesaid cheque of Rs. 70 lakhs issued by the company of the Petitioner in the discharge of its existing liability, meaning thereby that Respondent No. 2 has filed multifarious complaints for the dishonor of cheque against one single liability, which is not maintainable. In support of this, learned Counsel for the Petitioner has relied upon the judgment of this Court in the matter of Collage Culture and Others Vs. Apparel Export Promotion Council, and Taruna Batra v. Shikha Batra 147 (2008) DLT 257.

7. Learned Counsel for the Respondent has admitted in the course of argument that the cheques in question which are subject matter of the instant revision petition were issued by the Petitioner from his personal account as security and assurance for encashment of the cheque of Rs. 70 lakhs earlier issued by the Petitioner''s company and those three cheques were supposed to be presented in the event of the dishonor of cheque of Rs. 70 lakhs. Learned Counsel contended that since the cheque of Rs. 70 lakhs was dishonored, the Respondent had every right to present the above three cheques for encashment as an assurance by the Petitioner and since those cheques were dishonored, the Respondent was well within his right to file a complaint u/s 138 N.I. Act.

8. I have considered the rival contentions and perused the material on record. Before adverting to the submissions made by the parties, it would be appropriate to have a look on Section 138 N.I. Act, which reads as under:

138. Dishonor of cheque for insufficiency, etc., of funds in the accounts

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act, be punished with imprisonment for 2 ("a term which may extend to two year"), or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless

(a) The cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) The payee or the holder induce course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer, of the cheque, 3 ("within thirty days") of the receipt of information by him from the bank regarding the return of the cheques as unpaid, and

(c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability)

9. Plain reading of the above provision of law shows that criminal liability u/s 138 N.I. Act is attracted only if the dishonored cheque was issued for the discharge in

whole or in part of any existing debt or liability. The Section does not apply to a cheque issued to meet future liability which may arise on happening of some contingency. Thus, it is clear that a post-dated cheque, if issued for discharge of a debt due, in the event of dishonor, would attract Section 138 of the N.I. Act but a cheque issued not for an existing debt/liability but issued by way of security for meeting some future contingency would not attract Section 138 of the N.I. Act.

10. In the matter of M.S. Narayana Menon @ Mani v. State of Kerala and Anr. AIR 2006 (6) SCC 39, the Supreme Court while dealing with the issue, inter alia, observed as under:

52... If the defence is acceptable as probable the cheque therefore cannot be held to have been issued in discharge of the debt as, for example, if a cheque is issued for security or for any other purpose the same would not come within the purview of Section 138 of the Act.

11. In the instant case also, admittedly the cheques in question were issued by the Petitioner from his personal account as a guarantee/security for the encashment of the cheque of Rs. 70 lakhs issued by M/s Mother India Logistics & Minerals Pvt. Ltd. in favor of the Respondent No. 2 company. Those cheques were to be presented for encashment only in the event of the banker of the Petitioner''s company failing to honor the cheque of Rs. 70 lakhs issued by the aforesaid company in favor of Respondent No. 2. Thus, it is clear that the above referred three cheques of Rs. 25 lakhs each were issued by the Petitioner from his personal account only as a security, as such Section 138 N.I. Act is not attracted in respect of said three cheques.

12. Under the circumstances, the petitions must succeed. The summoning orders dated 10.09.2009 in respect of complaints No. 1594/2009, 3633/2007 and 3632/2007 are quashed.