(2015) 08 DEL CK 0304

In the Delhi High Court

Case No : Criminal M.C. No. 4299 of 2014 and Cri. M.A. No. 14871 of 2014

Ravinder C.P. Navelkar APPELLANT

Vs

Aruna Infracon Pvt. Ltd. and Others RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

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

Citation : (2015) 3 JCC 233

Hon'ble Judges : Sunil Gaur, J.

Bench : Single Bench

Advocate : S.M. Walawai Kar and V.K. Mehra, Advocates, for the Appellant; Vijay Aggarwal and Chaitali Jain, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—Petitioner is facing criminal proceedings Under Section 138 the Negotiable Instruments Act, 1881 and is aggrieved by impugned order of 17th May, 2014 (Annexure P-5) vide which petitioner''s right to further cross-examine respondent-complainant stands curtailed. What had compelled the trial court to curtail the cross-examination of respondent-complainant is the unnecessary and irrelevant cross-examination done on behalf of petitioner-accused on 5th October, 2013 and 19th April, 2014 as well as on 17th May, 2014. Trial court notes in the impugned order that respondent-complainant has been cross-examined at great length and despite several warnings, petitioner had not confined his cross-examination to the defence taken by him in the Notice under Section 251 of Cr.P.C. It is recorded in the impugned order that despite irrelevant questions being disallowed, petitioner persists to cross-examine respondent-complainant unnecessarily. The tenor of the impugned order is that vexatious cross-examination of respondent-complainant is never ending with a view to prolong the criminal proceedings to avoid the inevitable result.

2. At the hearing, learned counsel for petitioner had assailed the impugned order

on the ground that the relevant questions have been disallowed by trial court much to the prejudice of petitioner and to bring out the truth, detailed cross-examination of respondent-complainant is indeed necessary as the cheque in question was given in pursuance to the Settlement of 16th March, 2009 (Annexure P-2), which was a product of fraud and it was required to be brought on record that M/s. Anirva Developers Pvt. Ltd. was a subsidiary or sister-concern of respondent-complainant. Lastly, it was submitted that respondent-complainant needs to be cross-examined regarding the subsequent material developments to avoid multiplicity of litigation. Thus, quashing of the impugned order is sought in this petition.

3. Learned counsel for respondent-complainant had supported the impugned order and relied upon Apex Court''s decision in Indian Bank Association and Others Vs. Union of India (UOI) and Another, to submit that the objective of speedy summary trial in such like complaints cannot be allowed to be defeated by such unscrupulous accused persons as petitioner herein. It was pointed out that in order to have uniform practice in dealing with cases of dishonour of cheques, the cross-examination of complainant is required to be confined to the defence taken in the Notice under Section 251 of Cr.P.C., which petitioner fails to do so and so, this right to further cross-examination has been rightly closed by the trial court as no material subsequent developments have taken place.

4. Attention of this Court was drawn to the directions issued in Indian Bank Association (supra) to submit that the impugned order is in conformity with the directions issued by the Apex Court in the above-referred decision. Thus, rejection of this petition is sought.

5. Upon hearing and on perusal of the impugned order, copy of Notice under Section 251 of Cr.P.C., the copy of the cross-examination of respondent-complainant on various dates, the material on record and the decision cited, I find that the stand taken by petitioner in the Notice under Section 251 of Cr.P.C. is that the cheque in question bears his signatures and other contents were also filled by him, but it was obtained by misrepresentation and coercion. According to petitioner-accused, misrepresentation was made to him and he was coerced by purported Directors of complainant-company i.e. Satish Julka, Amardeep Julka, Ravi Arora and Baldev Arora. According to petitioner-accused, he has no liability towards complainant-company in respect of the cheque in question.

6. Keeping the afore-said defence taken by petitioner in mind, the cross-examination of respondent-complainant-Ravi Arora (CW-1) is cursorily perused and thereupon, it becomes evident that the Managing Director of complainant-company i.e. Ravi Arora has been extensively and comprehensively cross-examined by petitioner and on behalf of respondent-complainant, it is categorically denied that the aforesaid Settlement is not a product of fraud. It appears that the cross-examination of respondent-complainant is a never ending exercise undertaken by petitioner with a view to prolong the criminal proceedings to avoid the conclusion of the criminal proceedings.

7. Judicial notice can be taken of the fact that in such like cases, I accused often employs all such tactics to delay the proceedings on one pretext or the other, thereby defeating the very purpose of the Act i.e. speedy summary trial. The complaint in question is of the year 2014. Despite the lapse of more than one year, there is no end to recording of complainant''s cross-examination whereas in view of the direction issued by the Apex Court in Indian Bank Association (supra), the recording of evidence is to be concluded within three months of assigning the case.

8. During the course of hearing, it was put to petitioner''s counsel as to on what aspects respondent-complainant remains to be cross-examined and it was submitted by petitioner''s counsel that respondent-complainant needs to be cross-examined regarding the order of 28th April, 2014 passed by the Company Law Board in the matter of M/s. Baleshwar Sharma v. Ms. Anirva Developers Pvt. Ltd. & Ors. in CP No. 74(NO)/2010. This was objected to by respondent''s counsel, who had pointed out that respondent was not a party in the aforesaid matter before the Company Law Board and respondent is neither a subsidiary or sister-concern of M/s. Anirva Developers Pvt. Ltd. and so, there is no relevance to cross-examine respondent-complainant qua aforesaid order of 28 April, 2014.

9. It is pertinent to note that it has already come in the cross-examination of respondent-complainant that the complainant-company and M/s. Anirva Developers Pvt. Ltd. are two different and independent companies.

10. Upon considering this matter in its totality, this Court finds no palpable error in the impugned order. This petition is accordingly dismissed while refraining to comment upon the relevance or the evidentiary value of the cross-examination of respondent-complainant. This petition and the application are accordingly dismissed.