

(1993) 03 DEL CK 0060

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 1039 of 1992

Renu Vohra and Another

APPELLANT

Vs

Shreyans Paper Mills Ltd. and Others

RESPONDENT

Date of Decision : 23-03-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1993) 50 DLT 335 : (1993) 2 ILR Delhi 297 : (1993) 2 RCR(Criminal) 444 : (1993) RLR 341

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : Suman Kapoor, J.S. Sinha and O.P. Faizi, for the Appellant;

Judgement

R.L. Gupta, J.

(1) This petition has been filed u/s 482 of the Code of Criminal Procedure (Code for short) against an order dated 14-1-1992 passed by learned Addl. Sessions Judge in Cr. R. No. 36 of 1991. After recording evidence in the complaint filed by respondent No. 1, the learned Magistrate was of the view that there were sufficient grounds for proceeding against the petitioners and others u/s 138 read with Section 141 of the Negotiable Instruments Act. The petitioners filed a revision against that order. In the light of some authorities, learned Additional Sessions Judge came to the conclusion that the summoning order in this case was an interlocutory order, and so in view of the bar of Section 397(2) of the Code, the revision was not maintainable.

(2) The complaint against the petitioners, their husbands and the firm M/s. Natraj Industries of which all four of them were, alleged to be partners, stated that the complainant was a public limited Co. having its registered office at Village Bhola Pur, District Ludhiana and one V. D'Souza was its Branch Manager holding a power of attorney. The firm of the petitioners and their husbands had business dealings with the Complainant. The husbands were alleged to be managing affairs of the firm while the petitioners were alleged to be looking after

the supervision of the business. Thus all of them at all relevant times were in charge of and responsible for the conduct of the day to day business of the accused firm including placing of orders, making payments and issuing cheques. On 27-8-90 a sum of Rs. 3.27,598 was due and payable by the firm on account of goods supplied to them from time to time. In acknowledgement of its liability to pay the aforesaid debt, the accused firm issued cheque No. 313S17 dated 27-8-90 drawn on Oriental Bank of Commerce. Karol Bagh. New Delhi for that amount in favor of the Complainant. On presentment of the cheque for collection. it was returned unpaid with the banker's endorsement "Exceeds Arrangement". Relevant documents are attached with the complaint. Immediately on learning about the dishonour of the cheque. Complainant wrote a letter on 29-8-1990 bringing to the notice of the accused the dishonour of the cheque and asking them to make payment at the earliest. A copy of this notice is also attached with the complaint. The accused persons requested few days which was agreed to by the complainant. When they failed to pay the amount, a reminder dated 5-11-1990 was issued by the Complainant. The accused promised to send another cheque. But no cheque was received till 12-11-90 when another reminder was issued. The complainant received two cheques on 15-11-1990 under a common registered cover from the husbands of the petitioners, one for the amount in question and the other for the amount due to the complainant on account of goods supplied to M/s. Natraj Paper Converter, another firm of the petitioners and their husbands. On presentment the cheque for the amount due in this complaint was again dishonoured with the banker's comments "Exceeds Arrangement". This fact was again brought to the notice of the accused persons and they were again called upon to make the payment vide registered notice dated 27-11-90 within 15 days of the receipt of the notice failing which there was no way except the present complaint.

(3) I have heard arguments advanced by learned counsel for the parties. Contention of learned counsel for the petitioners is that so far as the present petitioners are concerned, no notice was received "by them and simply because notice was allegedly sent to their husbands would be no ground to make the petitioners liable for the payment of the amount of the dishonoured, cheques. There is no doubt that if it can be held that there is no notice to the petitioners or no notice can be inferred in the case of the petitioners, it may be possible to say that criminal complaint u/s 135 read with section 141 of the Negotiable Instruments Act is not maintainable qua them. Learned counsel turn the petitioners, however; did not discuss during the course of arguments the effect of Section 24 of the Indian Partnership Act, 1932. No argument was also addressed in this respect on behalf of the learned counsel for the respondent complainant. According , Section 24 of the Indian Partnership Act, 1932, "Notice to a partner who habitually acts in the business or the firm of any matter relating to the affairs of the firm operates as notice to the him, except in the case of a fraud on the firm committed by or with the consent of the partner." It is nowhere the case of the petitioners that any fraud had been committed on the firm by any

other partner. Naturally this could not be their case because partners habitually acting on behalf of the accused firm are none else than their own husbands. Moreover, in the complaint it has also been mentioned that even the petitioners have been looking after the supervision of the business of the accused firm. Even upon the basis of common sense, it is not possible to infer that the husbands of the petitioners would not tell them about the receipt of any notice by them on behalf of the firm from the respondent complainant. Since the receipt of notice in the case of a firm by even one partner habitually acting for the business of the firm operates as a notice to the firm, in such a situation the firm or any of its other partners cannot set up the ignorance of notice to some of its members as a defense and claim any benefit. Therefore, in equity the petitioners cannot be heard to say that they did not receive any notice. Moreover, it may be noted that it is a case in which not a word has been said on behalf of the petitioners that the complainant had or had not actually supplied goods to M/s. Natraj Industries, a firm of which the petitioners are admittedly partners. The issuance of cheques on behalf of the firm which were repeatedly dishonoured is also not referred to at all meaning thereby that prima facie the receipt of goods against which cheques were issued are not in dispute. There is also no dispute that in case cheques are dishonoured and a notice regarding dishonour was given within the prescribed time, a complaint can be filed. Merely on the technical ground that no notice was issued to the petitioners which argument in fact stands negated by Section 24 of the Indian Partnership Act, can it be said that in a situation like this, the Court should exercise its inherent powers u/s 482 of the Code. According to Section 482, there can be no limitation upon the exercise of inherent powers vested in this Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The order of summoning by the learned Magistrate against the petitioners along with other partners of the firm as well as the firm does not suffer from any infirmity and in fact was the only order which should have been passed in the circumstances of the case. Therefore, it is not a fit case in which even otherwise there is any circumstance on account of which this Court is called upon to exercise its inherent powers.

(4) Learned counsel for the petitioners cited a string of authorities to show in what circumstances inherent powers can be exercised by this Court. The first case is that of *Amar Nath and Others Vs. State of Haryana and Another*, (1) In that case the police filed a charge sheet against a number of accused persons. On perusal of that report some of the accused persons were released. The complainant then filed a revision petition against the order of discharge before the Additional Sessions Judge who dismissed the same. Thereafter he filed a regular complaint before the Judicial Magistrate against all including the released accused. After examining complainant and going through the record, the Magistrate dismissed the complaint. This time the revision against that order was accepted by the Sessions Judge. Magistrate then summoned all accused. Petition under Sections 482 and 397 of the Code against that order was dismissed by the

High Court. In the aforesaid circumstances when the matter came up before the Supreme Court, it held that the subsequent order of summoning the accused appellants was not an interlocutory order and, therefore, was amenable to the revisional jurisdiction of the High Court. But it specifically ruled that otherwise a harmonious construction of Sections 397 and 482 of the Code would lead to the irresistible conclusion that where a particular order is expressly barred u/s 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply. It further held that it was well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject matter. In the case of *Madhu Limaye Vs. The State of Maharashtra*, (2) the Supreme Court held that in case the impugned order brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely.