
(2012) 01 AHC CK 0379

In the Allahabad High Court

Case No : Criminal Misc. Application No. 21683 of 2007

R.K. Dixit

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141
Penal Code, 1860 (IPC) — Section 420

Citation : (2013) ACR 298 : (2012) 10 ADJ 375 : (2012) 2 BC 753

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon'ble Vinod Prasad, J.—Applicant R.K. Dixit, Manager Allahabad Bank/Field Officer, Allahabad Bank Branch, P.S. Civil Lines, District Moradabad has approached this court u/s 482 Cr.P.C., through instant Application, praying for quashing of his summoning order dated 1.6.2007 u/s 138 N.I. Act, (herein after referred to as the Act) passed by C.J.M. Saharanpur in Complaint Case No. 2713 of 2007, Mohd. Faisal Vs. Smt. Upama and other. Ancillary prayer is for stay of trial court's proceedings against the applicant pentene lite this Application in this court.

2. Stated briefly, back ground facts, as are decipherable from the pleadings made in the instant Application and annexure, including copy of complaint filed by complainant respondent no. 2 (Annexure no. 2), appended herewith, indicate that Mohd. Faisal, complainant Respondent No. 2, lodged complaint case no. 2713 of 2007 on 16.04.2007 in the court of C.J.M. Saharanpur, with the allegations that he(complainant) is the owner of a wood carving Firm M/s. Faisal Wood Carving Industries, district Saharanpur. Two non applicant accused Smt. Upama and Sumeet alias Isant Raghav, mother and son, are the owners of an exporter Firm M/s. Brass Manufacturing Company, District Moradabad and third

non applicant accused Rajiv Tyagi is it's Manager. Said Firm collects orders for supply of wood carving materials and after purchasing it from various manufacturers, exports them to their customers. Applicant R.K. Dixit is stated to be the Manager of Allahabad Bank in District Moradabad and it's bank advances loan to the said export Firm and fixes it's credit limit.

3. All the four accused came to the complainant's Firm on 08.11.2003, and introduced them as mentioned above and placed orders for supply of wood carving materials for export. Respondent no. 2 fell in their trap and booked their orders, being orders no. 312-365 in November 2003 and supplied them wood carvings worth Rs. 4,57,765/-. Accused remitted Rs. 5,05,000/-through cheque to the complainant which included sale prices of the supplied goods plus Rs. 72,095/-surplus amount. For the second time accused approached the complainant in April 2004, and placed order no. 392 and then again in May 2004 placed order no. 412, and, on the basis of these orders, complainant supplied wood carving goods worth Rs. 15,05,090/-through bill nos. 185 to 190 and 196. For these supplies accused made only partial payment of Rs. 7,00,000/-through an account payee cheque keeping Rs. 7,56,850/-as residue balance amount. The complainant, even though had an attack of paralysis and was lying in a serious condition, made repeated demands for payment of balance amount on phone but his requests went unheeded. Without clearing outstanding payment accused placed further order No. 9 for 600 pieces on 11.5.2006 and further oral order of 1004 pieces of wood carving goods. Before finalizing theses orders complainant intimated them that they had not paid earlier balance amount and without receiving that payment, complainant will not supply material, then the accused assured him that they will make entire payment with the newly placed orders and, in case, fresh placed orders are not supplied they will not reimburse the due balance amount. Complainant respondent no. 2 honored fresh order and supplied 6978 pieces of wooden bowls through bill Nos. 5,6,7,9,10 and 11 to the accused. However, accused returned 1540 bowl pieces to the complainant but retained rest of 5,438 pieces. At the rate of Rs. 100/-per piece supplied bowls costed Rs. 5,43,800/-. Accused deducted Rs. 1,30,200/-, price of returned bowls. It is mentioned in the complaint that Rs. 7,57,850/-balance amount for the year 2004 and Rs. 5,43,800/-for the year 2006, totaling to Rs. 1,30,200/-were deducted from the goods price for the year 2004 and resultantly a balance amount of Rs. 11,70,450/-was due on the accused and inspite of repeated demands the same was not being paid to the complainant. On 25.2.2007 accused came to complainant's Firm to place further orders but when balance payment was demanded before fresh supply is made then the accused gave a cheque of Rs. 8,00,000/-of Allahabad Bank, Moradabad being Cheque No. B.A./30931124 from account No. C.D. 378 dated 26.2.2007 from the cheque book belonging to the Firm M/s Brass Touch Company, the drawee being Firm M/s Faisal Wood Carving Industry. Said cheque was signed by Smt. Upama. Regarding residue amount Rs. 3,70,450/-, the accused assured complainant that the same will be sent to the complainant from Moradabad. It is further alleged

that applicant assured the complainant that he is the Bank Manager and as soon as the cheque is deposited for encashment, it will be honored and he further assured that in case of dishonor of cheque he will get the credit limit of the Firm fixed and get the cheque honored.

4. Complainant deposited issued cheque in his Punjab National Bank, Ambala Road, Saharanpur on 1.3.2007 in his bank account No. 1828008700003362 but he was intimated by the bank, on 14.3.2007, that the instrument has been dishonored because the cheque amount exceeded arrangement. On receiving bank's intimation, complainant contacted accused Nos. 1 and 2 on phone, but the son threatened the complainant not to make further calls about the payment nor to come his Firm otherwise he will be crushed to death and will be shot dead. When complainant contacted accused Rajeev Tyagi, Manager of the Firm at Moradabad, he also expressed his helplessness in getting the payments made good and also threatened the complainant. Left with no option, complainant dispatched demand notices through registered posts, on 24.3.2007, to all the accused through Sri Nasir Haider Zaidi, Advocate, Civil Courts, Saharanpur and demanded payment of the cheque amount of Rs. 8,00,000/- within 15 days from the receipt of the notice. Another copies of the notice were also sent through U.P.C. to all the accused. Except applicant all other accused refused to accept registered notices, which were re-delivered to the complainant but they all received notices sent through U.P.C. In spite of service of demand notices accused did not pay the cheque amount. It is alleged by the complainant that accused had cheated him and Aalam Khan, Mansoor and other employees of his Firm are the witnesses of this cheating. On such facts, complainant respondent no. 2 lodged the complaint, annexure no. 2, against the accused including applicant in the court of CJM, Saharanpur for committing offences under sections 138, 141, 141 of the Act and section 420 I.P.C.

5. CJM, Saharanpur, on the basis of annexure no. 2, recorded 200 Cr.P.C. statement, annexure no. 3, and then vide summoning order dated 1.6.2007, summoned all the accused only u/s 138 N.I. Act and fixed 15.7.2007 for their appearance. This has resulted in filing of instant 482 Cr.P.C. Application by the applicant bank Manager.

6. On above facts I have heard counsel for both the sides and learned AGA for the respondent State.

7. Supporting applicant's prayer for quashing the summoning order, applicant's counsel contended that the applicant had not issued any cheque and the same was bounced because of insufficiency of funds in the running account of other accused for which applicant cannot be prosecuted nor can he be saddled with any liability much less to say a criminal one. A Bank Manager is under no liability in private transactions through cheques. The applicant, being a Branch Manager, acted in accordance with the duty and no culpability can be attached to his act so as to amount any offence on him. Next it was harangued that for making out an offence u/s 138 N.I. Act, only the drawer of the cheque or, in case of a Firm or a

company the person responsible for the conduct of the business of the Firm or company can be held liable. Scope of section 138 of the Act cannot be expanded to imbibe in it's fold each and every person attached with the transaction. Applicant is neither employee of the Firm nor was responsible for the conduct of it's business and, therefore, against him no offence is made out u/s 138 of the Act and consequently the present Application deserves to be allowed and applicant's prosecution deserves to be quashed.

8. Learned counsel for the informant and learned AGA, argued to the contrary and submitted that applicant was omnipresent on all important occasions and had accompanied other accused persons to the complainant and had also assured the complainant regarding the payment of money and since, in his bank, other accused had accounts therefore, he can also be prosecuted as abettor of the crime and hence his prosecution is also justified which cannot be scuttled at it's thresh hold.

9. I have considered the contentions raised by both the sides. The controversy raised in this Application has a very narrow compass. The question is whether a bank manager can be prosecuted u/s 138 N.I. Act when there is no debt or liability on him nor he had issued the cheque nor is an employee of any Firm or company nor is responsible for the conduct of the business of the company. Section 138 N.I. Act provides that if an issued cheque from a running account is dishonored because of insufficiency of funds then the drawer and, in case the cheque has been issued by a company or a Firm, the person responsible for conduct of the business of the company or the Firm shall be responsible and in such a case if the cheque amount remains unpaid within 15 days from the date of service of demand notice then the drawer or the person responsible for the conduct of the business of the Firm or the Company shall be liable to be punished u/s 138 N.I. Act. Notice for demand is to be issued within a period of one month from the date of receipt of intimation from the bank regarding bouncing of cheque for insufficiency of funds. For clarity, section 138 N.I. Act is reproduced below:

138. Dishonor of cheque for insufficiency, etc., of funds in the account.-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 provision of this Act, be punished with imprisonment for (a term which may be extended to two years), or with fine which may extended 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 in due 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, (within thirty days) of the receipt of information by him from the bank regarding the return of the cheque 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 purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

10. A perusal of the aforesaid section clearly indicates that it is the person, who has issued the cheque i.e.: the drawer, is responsible for making payment of the cheque amount within statutory stipulated period of fifteen days, if the notice, as is contemplated under the said section, is served upon him. Aforesaid section takes into it's fold only such a drawer of the cheque. In case of a Firm or a company, section 141 of the Act further provides that along with the drawer of dishonored cheque, the person responsible for the conduct of business of the Firm or the Company shall also be liable to be prosecuted and punished. Section 141 of the Act is reproduced below:

141. Offences by companies.-(1) If the person committing an offence u/s 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in subsection (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be

deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,

(a) "company" means anybody corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

11. Thus what has been ordained in two statutory sections are that, but for the drawer of the cheque or person responsible for the conduct of business of the Firm or the Company, no other person can be prosecuted for committing offence u/s 138 of the Act. Applying above law on the facts of the present case, it is to be noted that, so far as the applicant is concerned, he had not drawn the cheque. It is the case of respondent complainant himself that the applicant is the manager of Allahabad Bank, Moradabad. Merely because the applicant accompanied other accused to Saharanpur at the time of placing of orders, this fact cannot saddle him with any responsibility u/s 138 of the Act. Facts stated in the complaint are unambiguous, that entire allegations relates to business transactions and advance supply of goods between other accused and complainant and applicant acted only for the benefit of his bank. Cheques were issued to make good balance payments by other accused persons. Summoning order, annexure No. 1, also indicates that but for section 138 of the Act accused had not been summoned for any other offence under the Indian Penal Code. There is no grievance raised by counsel for the complainant for non-summoning of the accused for offence u/s 420 IPC, albeit complaint was lodged under that section also. Prayer of the applicant is to be considered from the point of view of the offence for which he has been summoned. The case of the applicant is not covered u/s 138 N.I. Act at all. No ingredients for making out that offence against the applicant are present in the complaint. The residue of preceding discussion is that the prosecution of the applicant u/s 138 N.I. Act and his summoning order for that offence are wholly illegal.

12. In view of above this Application stands allowed. Impugned summoning order of the applicant, R.K. Dixit, dated 1.6.2007 in complaint Case No. 2713 of 2007, Faisal Vs. Smt. Upama and others, u/s 138 N.I. Act pending before C.J.M., Saharanpur is hereby quashed. As a note of caution it is made clear that prosecution of the other accused persons has not been quashed nor this application has been filed by them, therefore, this order will not be a parity or operate as res judicata or issue estoppels for continuing the prosecution of other accused which should be conducted strictly in accordance with law.

13. Let a copy of this judgment be certified to the trial court for further action at its end.