(1999) 09 MP CK 0057

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 1383/99

ROM Industries Ltd. and Another — APPELLANT

Vs

State of M.P. and Another — RESPONDENT

Date of Decision : 06-09-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22, 3(1)

Citation : (2000) 3 CivCC 664 : (1999) 2 JLJ 400 : (2000) 1 MPHT 433 : (2000) 3 MPLJ 125 : (2000) 4 RCR(Criminal) 410

Hon'ble Judges : M. Sharan, J

Bench : Single Bench

Advocate : R.D. Jain, for the Appellant; K.N. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Maithlisharan, J.

The brief facts necessary for the disposal of this petition run thus :

The petitioner No. 1 was originally incorporated as Roshan Lal Oil Mills Pvt. Ltd. in the year 1974, and its main business was manufacturing, processing the refining oils of all varieties and other oil containing media for human consumption and soap, perfumery and cosmetics. It is a public limited company and to meet out its capital expenditure it planned to raise funds through public issue. The funds were borrowed from inter corporate deposits at very high rates. Further, the petitioners'' case is that due to heavy losses and failure of the public issue the net worth of the Company was totally eroded and it eventually became a sick Company after declaration of the BIFR on 30-7-1997 in terms of Section 3(1)(o) of The Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter for short ''SICA'').

The case of the petitioners is that on 31-7-93 the respondent No. 2 had given loan to it through loan-cum-guarantee agreement dated 10-4-96 for Rs. 25,00,000/-, and as per the market practice, the Company issued two cheques bearing No. 764977 dated 10-4-96 for Rs. 25,00,000/- and another cheque bearing No. 764978 dated 10-4-96 for Rs. 94,932/- drawn on Bank of Patiala, Model Basti, New Delhi. But as the Company had incurred heavy losses and its net worth was totally eroded, it was unable to pay the aforesaid amount, and when the respondent No. 2 presented the cheques before the Bank, the same were returned unpaid on 27-8-96. On the above facts and circumstances, the respondent No. 2 filed criminal complaint No. 1721/97 dated 18-10-96 against the petitioners u/s 138 of the Negotiable Instruments Act in the Court of the Chief Judicial Magistrate, Gwalior, M.P.. The Chief Judicial Magistrate, Gwalior, issued summons against the petitioners, vide his order dated 27-1-1997 (Annexure P-4).

Now, being aggrieved by the aforesaid order dated 27-1-1997 the petitioners have approached this Court invoking its inherent jurisdiction u/s 482 of the Code of Criminal Procedure. Learned counsel for the petitioners, relying on the provisions of Section 22 of the SICA, vehemently contended that since the petitioner No. 1 (Company) had been declared a sick company and was not in a position to pay off the loan to the respondents the latter could not legally recover the money advanced and, therefore, no complaint in this regard u/s 138 of the Negotiable Instruments Act could be filed against the petitioners. I am afraid, in view of the factual position as alleged in the petition itself, the contention of the learned counsel is not sound. In para 11 of this petition the petitioners have alleged that the respondent No. 2 had filed criminal complaint No. 1721/97 u/s 138 of the Negotiable Instruments Act against the petitioners on 18-10-1996 i.e., much earlier to the declaration dated 30-7-1997 of the BIFR regarding the petitioner-Company having become a sick industrial Company in terms of Section 3(1)(o) of the SICA. Thus, even if Section 22 of the SICA places an embargo in proceeding to file a complaint in this regard, I am of the view that the said provision would not have come in the way of filing the instant complaint by the respondent No. 2 against the petitioner No. 1 in this regard as it had been filed much earlier. Putting the matter in a different way, the facts and circumstances of the instant case do go to indicate that when the above referred complaint was filed by the respondent No. 2 against the petitioner No. 1, the trial Magistrate was right in taking cognizance of it u/s 190, Cr.P.C. After taking cognizance the trial Magistrate ordered for the issuance of the summons against the petitioners on 27-1-1997 and naturally the said impugned order passed by the learned Magistrate was not without jurisdiction or for that matter it could not be said to be an abuse of the process of the Court, obviously because the petitioner-Company was declared sick on 30-7-97, that is, long after the passing of the impugned order.

In view of the above factual and legal position involved in the case, I am not inclined to admit this petition for final hearing and it is dismissed in limine.