(2019) 07 DEL CK 0579

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 4980, 4981, 4982, 4983, 4984, 4969 Of 2018, Criminal Miscellaneous Application No. 33143, 33200, 33202, 33204, 33206, 33208 Of 2018, 5733-5734 Of 2019

Shivom Minerals Limited & Ors — APPELLANT

Vs

State & Anr — RESPONDENT

Date of Decision : 17-07-2019

Acts Referred:
Negotiable Instruments Act, 1881 — Section 138

Citation : (2019) 07 DEL CK 0579

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : N. Hariharan, Ashwani Kr. Dhatwalia, Iti Sharma, Kuljeet Rawal, Izhar Ahmad, Ashish Pratap Singh, Deepa Sharma

Judgement

Sunil Gaur, J

In the above captioned six petitions quashing of complaints under Section 138 of Negotiable Instruments Act, 1881 and the summoning orders was sought initially on the ground that the cheques in question were issued as security cheques.

The factual background of this case emerging from the Demand Notice of 6th December, 2013 sent by respondent-complainant to petitioner is as under:-

2. "That in lieu of the business correspondence between you and my client, my client company had sent payments to you through RTGS and in discharge of your part liability towards my client you addresses no. 3 being the Director of addressee no. 1 and n connivance, consent and knowledge of addressee no. 2 to 4 and 5 issued the following cheques in favour of my client as under:-

CHEQUE No.

DATED

AMOUNT

DRAWN ON

018110

18.10.13

☐ 1,00,000,00/-

IDBI Bank Bhuvneshwar Orissa

018111

18.10.13

☐ 1,00,000,00/-

---do----

014296

17.10.13

☐ 1,40,00,000/-

---do----

3. That your aforesaid cheques were duly deposited by my client with his banker IDBI Bank, Preet Vihar, Delhi but to the utter dismay of my client the said cheques have been dishonoured for the reason "Exceeds Arrangement" and Signature differs".

4. That my client was intimated about the dishonor of the said cheques on 16.11.13."

Vide Reply of 26th December, 2013 petitioner had responded to aforesaid Demand Notice while stating as under:-

" Cheque nos. 014226 & 014229 were never handed over to your client. Those are amongst few of our lost cheques under due intimation to the local Police. Please note that under the guard of our previous relationship, your client could manage getting through these cheques stealthily from our office premises and presented these cheques to defraud us. Thereby he is liable to be criminally prosecuted under the statute of law.

Cheque nos. 014295 & 014296 were handed over to your client against an MOU (Tentative Terms for supply) dtd. 10/11/2012 for Supply of raw material. Your client has not supplied any raw material for our iron beneficiation plant so far. Therefore he was supposed to return these security cheques against this specific MOU.

Similarly, another three no. cheques bearing no. 018110, 018111 & 018112 were handed over to your client against second MOU (Final proposal for Trading) entered on 1st Jan. 2013 for trading & export of iron ore. This business venture also could not mature. As such your client was also supposed to return back all these three no. security cheques".

On the basis of respondent's complaints (CC No. 56/2014, 57/2014 & 58/2014) under Section 138 of Negotiable Instruments Act, 1881 pre-summoning evidence, trial court vide impugned order has summoned petitioners.

Quashing of impugned complaints and summoning order of 14th February, 2014 is sought by petitioners while asserting as under:-

A. "The subject cheques were issued by Shivom as security under two MOUs along with covering letters. The business under those MOUs was never transacted due to non-issuance Mineral Trading License to respondent-complainant. Despite this, respondent-complainant didn't return the cheques but fraudulently presented the same for encashment.

B. Thus, the cheques were not issued towards any legally enforceable debt or liability and therefore, the same doesn't attract the provisions of Section 138 of NI Act and the complaint filed by the respondent-complainant is not maintainable.

C. That in the reply to the legal notice dated 6/12/2013, Shivom categorically denied its liability and specified that the cheques were issued towards security under two MOUs. But Ld. Magistrate failed to apply judicial mind on the replies dated 24/26/12/2013.

D. During investigation in two complaints filed by Shivom i.e. 928-929/2014, respondent-complainant had admitted that the subject cheques were issued towards security under the MOUs and instead of returning those cheques after cancellation of MOUs, respondent-complainant has presented the cheques".

Reliance was placed by petitioner's counsel upon Supreme Court's decision in 'M/S Indus Airways Pvt. Ltd And Ors Vs. M/S Magnum Aviation Pvt. Ltd. And Anr.' 2014 (4) SCALE 645 to submit that the cheques in question were security cheques and since the MoU for supply of iron ore did not commence therefore, there is no existing debt or liability. Copy of order of 30th May, 2019 of Allahabad High Court in 'Akash Gupta and 11 Others Vs. State of U.P. and Another was handed over to the Court by petitioner's counsel during the course of hearing, to submit that FIR lodged by respondent-complainant herein for the offence of cheating, forgery etc against petitioners relating to MoUs in question has been quashed. However, while concluding his submissions, learned Senior counsel for petitioners had confined his submissions to impugned complaints not disclosing the nature of business transaction, quantum of liability and the purpose for which his cheques were issued. Thus, it was submitted that in the absence of averments on the aforesaid vital aspects, it cannot be said that there was existence of legally enforceable debt or liability. To submit so, attention of this Court was drawn to the impugned complaints as well as the pre-summoning evidence. So, it was submitted that the complaints and the summoning orders deserve to be set aside.

On the contrary, learned counsel for respondent-complainant submitted that the MoUs did not mention the iron ore alone and it related to steel items also and the cheques in question were issued against the liability in respect of the steel items. It is pointed out that when the cheques in question were presented, the existing liability was of ☐ 12 Crores. So, it was submitted that cheques in question were towards an existing liability and were not security cheques. Thus, it was submitted that no case for quashing of the complaints or the summoning orders is made out.

After evaluating the submissions advanced, impugned complaints, pre-summoning evidence, material on record and the decisions cited, I find that Supreme Court in 'Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others' (1998) 5 SCC 749 had quashed the complaint and the summoning order, as it was found that there were no averments in the complaint on the basis of which a complaint could be maintained. Supreme Court in 'S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another' (2005) 8 SCC 89 has reiterated that in a case of Section 138 of NI Act the essential averments are to be made in the complaint. Again in 'Omniplast Private Limited Vs. Standard Chartered Bank and Others' (2015) 15 SCC 693, Supreme Court has declared that in the absence of requisite pleadings in respect of the transaction concerned, quashing of the complaint of 138 of NI Act is justified.

In the instant case, to assert the necessary ingredients of existing debt or liability, it is required to be averred in a complaint of Section 138 of NI Act, as to what is the factual basis to show existing debt or liability.

All that has been said in the complaints in question and the pre-summoning evidence is as under:-

"3. That complainant and accused were known to each other and both parties had substantial business transactions and in lieu of the business correspondence and financial transactions complainant company had sent payments to accused persons through RTGS and in discharge of part liability towards complainant co. you accused no. 3 being the Director of accused no. 1 and in connivance, consent and knowledge of accused no. 2, 4 and 5 issued the following cheques in favour of my client as under:-

CHEQUE No.

DATED

AMOUNT

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014296

17.10.13

☐ 1,40,00,000/-

---do----

In the absence of necessary averments in the complaints in question regarding the nature of transaction between the parties, complaints in question cannot be maintained on such sketchy averments as highlighted above. Such view was taken in a similar case by Supreme Court in 'Omniplast Private Limited (Supra) while concluding as under:-

"That apart, as rightly pointed out by Mr Divan, learned Senior Counsel, in the absence of necessary pleadings with particular details as regards the property based on which the transaction was stated to have been entered into between the appellant and M/s A.D. Exports (P) Ltd. there is every justification in the stand of the respondents to doubt the full transaction as between the appellant and M/s A.D. Exports (P) Ltd. More so, when a huge sum of Rs 44,86,000 was stated to have been parted with by the said agreement holder to the appellant who agreed to hand over the possession along with the title deeds. Here again, we do not wish to go into the details of the said stand raised on behalf of the respondents but yet we only state that such a stand definitely creates very serious doubts about the whole transaction itself, especially when the sum of Rs 44,86,000 covered by the pay order was returned by Respondent 1 Bank in order to comply with the attachment proceedings issued by the Income Tax Department".

In light of the aforesaid factual and legal position, this Court is of the considered opinion that necessary ingredients to maintain the complaints in question are lacking, thereby rendering the impugned order unsustainable and so, continuance of proceedings arising out of the complaints in question would be an exercise in futility.

Consequentially, the impugned complaints (CC No. 56/2014, 57/2014 & 58/2014) and the summoning orders are hereby quashed.

These petitions and applications are accordingly disposed of.