

(2021) 04 DEL CK 0013

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 1792 Of 2020, Criminal
Miscellaneous Application No. 12554 Of 2020

Shyam S. Bageshra

APPELLANT

Vs

State Nct Of Delhi & Ors

RESPONDENT

Date of Decision : 06-04-2021

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138, 141, 142
Code Of Criminal Procedure, 1973 — Section 202, 252, 482

Citation : (2021) 04 DEL CK 0013

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Subhash Chawla, Amit Chadha

Final Decision : Dismissed

Judgement

Suresh Kumar Kait, J

1. Worlds Window Impex (India) Pvt. Limited, incorporated under the provisions of Companies Act, 1956, preferred a complaint against Rathi Steel And Power Limited and its Directors- Mr. Sumit Dass and Mr. Shyam S. Bageshra under Sections 138/141/142 of Negotiable Instruments Act, 1881. The complainant-company is engaged in the business of import and trading of ferrous, non-ferrous metals, precious metals and metal scrap whereas accused-company is a private limited registered company under the provisions of The Companies Act.

2. The complainant has alleged that the accused-company through its Director, petitioner herein, had approached the office of complainant on various occasions for supply of shredded steel scrap as per their business requirement and the material was promptly supplied as per demand. It is alleged that against supply of steel scrap against invoice bearing Nos. 2080000493 and 2080000494 for a sum of Rs. 1,14,62,732.27/- [as per agreed rate of Rs. 23131.80 /MT dated 23.08.2013], payment was to be made immediately after supply of material. A few payments against these invoices were received, however, as per accounts

maintained by the complainant-company, an amount of Rs.80,00,000/- along with interest @24% was shown due towards accused-company as on 08.05.2017.

3. It is alleged that against discharge of afore-noted due payment, the accused-company had issued cheque bearing No.000531 dated 27.12.2016 for Rs.80,00,000/-, drawn on Bank of Baroda, branch Gandhi Nagar, Ghaziabad while assuring the complainant-company that the same shall be honoured as and when presented in the bank. However, upon presentation of the cheque, the same was returned by the bank vide Memo dated 27.03.2017 with the remark "Account Blocked". The complainant sent a legal Demand Notice dated 12.04.2017 to the accused company and it was served upon the accused-company and the petitioner on the same day.

4. On 06.05.2017 the complainant received a reply from the accused-company wherein it blatantly refused any liability towards complainant, whereas according to the complainant, the shredded steel scrap was supplied as per the business requirement of accused-company and the cheque in question was issued towards discharge of liability and accused tried to evade the legitimate payments of the complainant. According to the complainant, the cause of action had first arisen on the day of issuance of impugned cheque and further action arose when on presentation of cheque in bank, the same was dishonoured on 27.03.2017 and thereafter, when the accused failed to pay the cheque amount within 15 days of receipt of legal Demand Notice dated 12.04.2017. Hence, the complainant filed a complaint under Sections 138/141/142 of Negotiable Instruments Act, 1881 before the learned trial court for remedies as per law.

5. In the complaint so filed, the learned trial court, after going through the dates and events, evidence and documents on record as well as upon inquiry under Section 202 Cr.P.C., vide order dated 31.08.2017 held that prima facie offence under the Negotiable Instruments Act was made out against the accused and directed summoning of accused- company and its two Directors.

6. Against the aforesaid summoning order dated 31.08.2017, the Directors of the accused company filed application seeking discharge as well as dismissal of complaint before the trial court, which was dismissed vide order dated 21.12.2019 while observing that the pleas urged by them have to be seen during trial and also that once the plea of accused is recorded under Section 252 Cr.P.C., procedure contemplated under Chapter XX of the Code has to be followed and the only remedy available with the accused is under Section 482 Cr.P.C.

7. Aggrieved against the impugned summoning order dated 31.08.2017 and dismissal order dated 21.12.2019, petitioner, who is allegedly one of the Director of accused-company, is before this Court seeking quashing of these orders as well as the complaint in question.

8. In the present petition, the stand of petitioner is that he is not Director but in fact an employee of accused-company. He had joined the services of accused-company on 01.07.2015 and prior thereto he was under employment with one M/

S Ahuja Radios. Learned counsel for the petitioner submitted that in the impugned Demand Notice dated 12.04.2017 the complainant has only stated "that you the notice (sic Noticee) being the directors and authorised signatory of notice company are responsible for day to day business affairs of the notice (sic Noticee) company and has signed the cheque in question under the present notice", however, it is nowhere stated as to who had signed the impugned cheque on behalf of the accused-company. It is further submitted that in reply to the aforesaid legal Demand Notice dated 12.04.2017, accused-company has clearly stated that petitioner and the other named person are neither the Directors nor authorized signatories to operate the bank account and that the cheque in question is forged and fabricated and also that a blank cheque leaf had been stolen by the complainant in collusion with employee, in respect of which a police complaint was also made at police station Vijay Nagar, Ghaziabad on 20.4.2017.

9. It is further submitted that while passing the impugned summoning order dated 31.08.2017, the learned trial court has not taken into consideration the fact that in the complaint in question, complainant has failed to establish as to how petitioner was responsible for dishonour of cheque and the fact that despite directions, petitioner could not produce record of Registrar of Companies (ROC) showing that petitioner was one of the Directors of the accused company and was responsible for day to day affairs of the company. It is next submitted that the learned trial court, while rejecting petitioner's application seeking discharge, has ignored the ratio of dictum laid down by the Hon'ble Supreme Court in N.K.Wahi Vs. Shekhar Singh AIR 2007 SC 1454 and another decision of this Court in Urshila Kerkar Vs. Make My Tri 2013 SCC OnLine Del 4563, however, has erroneously held that the only remedy available to the accused is to challenge the summoning order under Section 482 Cr.P.C.

10. Lastly, it was submitted that impugned summoning order dated 31.08.2017 as well as order dated 21.12.2019 are untenable in law and are liable to be set aside.

11. In the counter affidavit filed on behalf of respondent No.2/complainant herein i.e. Worlds Window Impex (India) Pvt. Limited through its representative, the stand taken in the complaint has been reiterated and it is stated that petitioner had represented himself as the key managerial person responsible for day to day operations of respondent No.3-company i.e. Rathi Steel and Power Limited and had visited its office on several occasions to supply shredded steel scrap as per their requirements. Reliance is placed upon copy of a document (Annexure-A) from the MCA website wherein petitioner's name is listed as the Authorized Representative of respondent No.3/company. It is stated that as per the requirements of respondent No.3, petitioner had supplied steel scrap on agreed commercial terms including rates, quantity and quality of steel scrap, against invoice bearing Nos. 2080000493 and 2080000494, amounting to Rs.1,14,62732.17/- as per agreed rate of Rs.23131.80/ MT, however, payment

was to be made immediately on supply of material.

12. It is also stated that for an outstanding amount of Rs.80,00,000/-, the respondent No.3- company, had issued a cheque on 27.12.2016 bearing signatures of the petitioner and the same was handed over to respondent No.2/ complainant company by petitioner himself on a false assurance that the same shall be honoured on presentation with the bank. further stated that when the said cheque was presented in bank, the same was returned vide Return Memo dated 27.03.2021 with the remark "Account Blocked" and thereafter, Legal Demand Notice dated 12.04.2017 was served upon the petitioner.

13. Learned counsel for respondent No.2/complainant submitted that the pleas raised by the petitioner in this petition as to whether he was authorized representative of respondent No.3 or its employee and whether respondent No.3 had sent a reply to the Legal Demand Notice or whether the cheque in question is a stolen cheque or has been issued against a pending debt or liability, are questions which can only be unfurled in full-fledged trial, and therefore, this petition is liable to be dismissed.

14. In rebuttal, it was submitted that petitioner had joined respondent No.3 company on 01.07.2015, whereas the disputed transactions between respondent No.2 and respondent No.3 companies pertain to the year 2013 and also that the document (Annexure-A) from the MCA website wherein petitioner's name is listed as the Authorized Representative of respondent No.3/company, pertains to the year ending March, 2019 and not August, 2013, wherein too petitioner has been mentioned as Authorized Signatory and not the Director of respondent No.3 -company.

15. Lastly, it was reiterated that petitioner is not the signatory of cheque in question nor is he authorised signatory of the bank account upon which the cheque is drawn. Reliance is also placed upon a copy of certificate dated 17.11.2017 issued from Bank of Baroda, Gandhi Nagar Branch, Ghaziabad, UP (Annexure-B) to substantiate this argument. It was, therefore, submitted that petitioner has no liability towards the complainant and hence, legal proceedings cannot be initiated against him. It was further submitted that respondent No.3 in its reply to the Legal Demand Notice has categorically stated that the accused / petitioner is not the Director of company, nor he is authorised to issue any cheque on its behalf and that the stolen forged cheque in question does not bear signature of any authorised person. Thus, the allegations that petitioner had issued and handed over cheque in question to complainant are false and after thought as no such averment has been made in the complainant in question. Accordingly, it is urged that the impugned orders deserve to be set aside.

16. The rival contentions raised by learned counsel for the parties have been heard at length and I have gone through the impugned orders and material placed on record.

17. The stand of complainant is that against supply of material to accused-

company, two invoices bearing Nos.2080000493 and 2080000494 for a sum of Rs.1,14,62,732.27/- [as per agreed rate of Rs.23131.80 MT dated 23.08.2013] were raised, however, an amount of Rs.80,00,000/- along with interest @24% was shown due towards accused-company as on 8.05.2017 and against the said debt/liability, the cheque in question was issued by the petitioner, which dishonoured and led to filing of the complaint in question.

18. Whether or not the complainant-company had entered into some kind of agreement with accused-company for the business transaction in question and in what manner the accused-company made payment of the amount Rs.34,62,732/- i.e. the amount which stands already paid out of total transaction of Rs.1,14,62,732.27/-, to the complainant-company is a matter of scrutiny.

19. In the present petition, petitioner has taken the plea that the respondent No.2-complainant company had entered into some business dealing with respondent No.3-accused company and that upon receipt of legal Demand Notice under Section 138 of N.I.Act and pursuant to having received summons, he appeared before the learned trial court seeking discharge in the complaint in question. Petitioner has also stated that he had joined the services of accused-company on 01.07.2015 and the record of Registrar of Companies (ROC) pertains to the year the year 2019 cannot be taken into consideration. He has also taken the plea that he is neither the Director nor is the person managing day to day affairs of the accused-company and also that despite opportunity given by the trial court, complainant has not been able to bring any documents on record to establish this fact and had even failed to file reply to his application seeking discharge and in the absence thereof, the impugned dismissal order passed by the trial court cannot sustain in the eyes of law.

20. Petitioner has further pleaded that he is not the signatory of the cheque in question and has rather stated in his application before the trial court that the said cheque leaf was stolen from the office of accused-company by the complainant with the connivance of some worker and in this regard a complaint was lodged in May, 2017.

21. A bare perusal of chain of events, as stipulated in the complaint in question shows that against an outstanding debt/liability, respondent No.3-company, had issued a cheque dated 27.12.2016, which on presentation with the bank was returned vide Return Memo dated 27.03.2017 with the remark "Account Blocked" and thereafter, Legal Demand Notice dated 12.04.2017 was served upon the petitioner.

22. The copy of Company Master Data, as available on the website of the accused-company and relied upon by the petitioner, though pertains to the year 2019, but at the last page it mentions the name of petitioner under the category headed as "Directors/Signatory Details" and under another heading "Begin Date" it mentions the date 01.07.2015. Pertinently, the cheque in question is dated 27.12.2016. Hence, the claim of petitioner that he was not the Director of the

accused company on the date of issuance of cheque comes under the clouds. Moreover, the complaint against theft of cheque is stated to have been registered in May, 2017 i.e. much after dishonouring of cheque by the Bank on 27.03.2017 and issuance of Legal Demand Notice dated 12.04.2017. Thus, possibility of an afterthought escape from liability cannot be ruled out. Moreover, extract of Form-14, "Leave with Wages Register" does reflect petitioner's name and also the date of "entry into service" as 01.07.2015 but the details mentioned therein pertains to the period January, 2019 till November, 2020 but no record qua the years 2015 to 2018 i.e. the period of his employment, has been placed on record and this leaf does not even reflect by whom (designation of concerned employee of accused company) these entries have been recorded and in the absence thereof, a logical conclusion cannot be arrived at by merely looking at this half informed document. However, several other documents including copies of the Income Tax Returns for the year 2013-14, 2014-15, 2015-16 and 2016-17 and Annual Reports of Rathi Steel and Power Ltd. i.e. accused-company, have been placed on record to establish petitioner's stand. Similarly, the contents of certificate issued from the Bank of Baroda, Branch Gandhi Nagar, Ghaziabad stating that "the cheque in question did not bear signature of authorized signatory /person as per their records" are also subject to verification.

23. The question for consideration before this Court is as to whether the averments in the complaint are sufficient to proceed against the petitioner as contemplated under Sections 138 and 141 of Negotiable Instruments Act and also whether continuation of the proceedings against the petitioner, who claims to be neither the signatory of the cheque nor the person in charge of the accused-company, is proper?

24. The Hon"ble Supreme Court in *N. Rangachari v. BSNL* (2007) 5 SCC 108 has held as under:-

"27. We think that, in the circumstances, the High Court has rightly come to the conclusion that it is not a fit case for exercise of jurisdiction under Section 482 of the Code of Criminal Procedure for quashing the complaint. In fact, an advertence to Sections 138 and 141 of the Negotiable Instruments Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company to show that they are not liable to be convicted. Any restriction on their power or existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial such a restriction or to show that at the relevant time they were not in charge of the affairs of the Company. Reading the complaint as a whole, we are satisfied that it is a case where the contentions sought to be raised by the appellant can only be dealt with after the conclusion (sic commencement) of the trial."

25. Further, the Hon"ble Supreme Court in a decision of 10.02.2020 in *Rajeshbhai Muljibhai Patel & Ors. Vs. State Of Gujarat & Anr.* 2020 (3) SCC 794

has held that "When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the N.I. Act ought not to have been quashed by the High Court by taking recourse to Section 482 Cr.P.C.".

26. Whether petitioner's employment with the accused-company was confined to maintenance of accounts or he was the Director or Authorized Signatory of accused-company and whether or not the cheque in question was signed by him or whether complainant is able to bring sufficient material before the court to rope in petitioner for the offence in question, are the aspects which can be established during trial, therefore, it would be against principles of law to arrive at a conclusion without going into the merits of the case.

27. In the light of above, I am not inclined to interfere in the orders passed by the learned trial court. The petition and pending applications are accordingly dismissed while refraining to comment upon the merits of the case.