

(1993) 02 DEL CK 0018

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 933 of 1992

S.K. Mehta

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 09-02-1993

Acts Referred:

Citation : (1993) 1 Crimes 958 : (1993) 51 DLT 662 : (1993) 27 DRJ 53 :
(1993) 2 RCR(Criminal) 344

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

Bench : Single Bench

Advocate : D.C. Mathur, R.M. John, Raman Sawhney and Sohail Dutt, for the Appellant;

Judgement

R.L. Gupta, J.

(1) This petition u/s 482 of the Code of Criminal Procedure (Code for short) read with Article 227 of the Constitution of India has been filed for quashing an order dated 26.10.1991 of the learned Metropolitan Magistrate, New Delhi whereby the petitioner was summoned for an offence under Sections 403 and 406 Indian Penal Code and for quashing of the aforesaid complaint on the basis of which the petitioner was summoned.

(2) The case in the complaint is that the complainant M/s Comtel International (P) Ltd. New Delhi issued four bank drafts of different amounts towards earnest money for purchase of four plots from New Okhla Industrial Development Area (NOIDA). The complainant, however was not successful in the draw of lots and, Therefore, the amount of two drafts of Rs.21,500.00 and Rs.16,200.00 was refunded to the complainant. Initially the refunded. cheques were issued by Noida in the name of the petitioner, S.K. Mehta who was one of the Directors of the Company. He, however, ceased to be a Director with effect from 22.9.87 and Therefore, on the request of the Company the cheques were refunded in the name of the Company itself. The balance amount of Rs. 13,000.00 paid by two separate drafts, however, was not refunded and, Therefore, the Company wrote a

letter to the Authority which replied that the aforesaid amount of Rs. 13,000.00 had been refunded to the petitioner vide two cheques of Rs.6500.00 each dated 18.11.87 drawn on Canara Bank. Therefore, the Company called upon the petitioner accused to refund the said amount. The petitioner, however, intentionally and knowingly holding himself as a Director of the Company received the two cheques for and on behalf of the Company and illegally and unauthorisedly mis-appropriated the same. The further case is that the petitioner was entrusted with the aforesaid drafts by Noida for and on behalf of the complainant and was liable to return the same to it which he failed to do despite repeated requests and demands, and thus committed an offence u/s 630 of the Companies Act read with Sections 403,406 and 409 IPC.

(3) After recording preliminary, evidence of two witnesses, namely, S.K.Gupta and N.K. Sharma, the Magistrate summoned the accused only u/s 403 and 406 Indian Penal Code It is against this order that this petition has been filed.

(4) I have heard arguments advanced by learned counsel for the parties. On behalf of the petitioner, it has been argued that even if the allegations as made in the complaint were admitted as correct, the petitioner was liable to refund amount of Rs.13,000.00 to the complain- ant and by no stretch of imagination could he be deemed to have been guilty under Sections 403 and 406 Indian Penal Code It was contended that it was not a case wherein there was any entrustment to the petitioner of the aforesaid amount by the complainant and on that score alone there was no merit in the complaint because the most essential ingredient of the offence by way of enticement was completely missing in this case. Learned counsel for the petitioner further contended that in fact, the petitioner was always ready and willing to refund this amount to the complainant along with interest, if any, which accrued during. this whole period. It was actually a case of no fault on the part of the petitioner because it was the Noida authority which sent refund cheques to the petitioner who in routine deposited the same in his account. In fact, the purpose of the complainant, it is further contended, was to pressurize the petitioner so that he may relinquish his other claims against the complainant in respect of which civil litigation is pending between the parties. It is admitted before me that civil cases are pending between the parties against each other.

(5) During the course of arguments to test the bonafides of the petitioner, I called upon his counsel Sh. D.C. Mathur that if the petitioner was genuinely interested in making the payment, was he prepared to refund the same in Court along with interest? Mr. Mathur replied that even earlier he had offered the same and now also he will not go back on his assurance. He, in fact, brought cheques to settle the dues of the complainant on the basis of which this complaint was filed. Learned counsel for the respondent-complainant was requested to advise his client to accept the amount but the reply is that the complainant is not prepared to accept the amount and the Court may pass any order.

(6) As already stated above, cross cases are pending between the parties. The

complainant company admittedly did not include the amount of these two cheques of Rs.13,000.00 in its earlier recovery suit against the petitioner. is not difficult for me to visualise that the intention of the complainant may be the same as pointed out by learned counsel for the petitioner. In fact, the amount involved was so petty that the complainant party should have accepted this amount and it would have rather saved it from filing a civil suit of recovery against the petitioner.

(7) On merits, I find that even if the allegations in the complaint are deemed to be prima facie correct, no offence is made out against the petitioner. It is a case of civil liability. Even a notice dated 19.12.89 was given through lawyer by the complainant company calling upon the petitioner to refund the amount. This is so stated in para 5 of the complaint itself. I am, Therefore, of the view that it was not a fit case wherein the petitioner could have been summoned for any offence under Sections 403 and 406 Indian Penal Code The complaint, Therefore, filed against the petitioner by the respondent company is hereby quashed.