

(1996) 06 CAL CK 0050
In the Calcutta High Court
Case No : Criminal Rev. No"s. 65, 66 of 1995

Smt. Sova Mukherjee

APPELLANT

Vs

Rajiv Mehra

RESPONDENT

Date of Decision : 21-06-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (1998) 2 ALD(Cri) 171 : (1996) 2 CALLT 339 : (1997) 1 CivCC 276 :
(1998) 2 RCR(Criminal) 474

Hon'ble Judges : Rabin Bhattacharyya, J

Bench : Single Bench

Advocate : Amit Talukdar and Kallon Mondal, for the Appellant; Balai Roy and Ashim Roy, for the Respondent

Final Decision : Dismissed

Judgement

Rabin Bhattacharyya, J.—This criminal revision is directed for quashing of the proceedings sprang up from the complaint case No. 1468 of 1994 pending disposal before the learned Metropolitan Magistrate, 11th Court Calcutta.

2. The facts, as much as, they are relevant for the purpose of the decision in criminal revision are as follows:-

3. The respondent opposite parties sold Indian made foreign liquor to the petitioner revisionists.

4. The revisionist No. 2, as constituted Attorney of the revisionist, issued an account payee cheque, dated 6.5.94. for a sum of Rs. 30,000/- in discharge of partial liabilities, drawn on UCO Bank, Sealdah. The same was, however, presented to the said bank for encashment by the respondent opposite parties. Unfortunately, the cheque was bounced off as it exceeded the arrangement revealed by the memo dated 1.7.94.

5. The respondent opposite parties caused a notice to be served on the petitioner

revisionists on 20.7.94 which went unheaded by the revisionists. The cheque, since bounced the respondent opposite parties was constrained to file the complaint before the Metropolitan Magistrate for an offence alleged to have been committed by the revisionists under the Negotiable Instrument Act, 1881. The process was issued against the revisionists directing them to appear before it on 3.12.84. The revisionists have challenged the proceedings to be non-est for the non-application of mind by the learned Metropolitan Magistrate, who according to the revisionist, issued process quite contrary to law. The revisionists have also attacked the complaint to be barred by limitation and the cognizance, thus, taken by the learned Court below, is not only legal, but also inconsistent with the statutory law, when this revision before this Court for quashing.

6. Mr. Talukdar has argued with much emphasis that the complaint is ipso facto illegal as the revisionists No. 1 bore no liability under the law. She could not be dealt with under the provisions of the N.I. Act. The cheque, since dishonoured, could not attribute to her any liability either vicarious or otherwise.

7. The claim has been studiously refuted by the learned Counsel for the respondent on the ground that the cheque when issued by a constituted Attorney could not absolve the revisionist Nos. 1 and 2 either from the liability. It becomes, in the state of materials, a collective legal liability which cannot be shrived at the expense of that view. The cheque, when issued by the constituted Attorney, the revisionist No. 2, cannot relieve the revisionist No. 1 of legal liability as she was not the drawer of the cheque. This is absolutely a feeble plea as the cheque was issued under the authority of the accused No. 1. A constituted Attorney by his acts and deeds can bind the principle. It means, a person appointed by another to do something for him. Therefore, a constituted Attorney when duly appointed under a document authorising the person to whom it is given to act in all respects as the grantor of the power, in relation to the matter specified in the document. When the power is general, it applies to every thing in which the grantor is interested. But when it is special, it applies to specific matter, such as the power to sign cheques, to make transfers, to receive money, to present documents for registration etc. Thus, the cheque issued by the constituted Attorney, the revisionist No. 2 in partial discharge of the debt deemed to have been issued under the authority of the revisionist No. 1, who might be a lady. The revisionist cannot shrug off the claim of demand of the respondent opposite parties under the pretence that the revisionist No. 1 owes no liability under the Negotiable Instrument Act, when the cheque was issued to discharge the partial liability is patent. A principle is always bound by the act of his or her Attorney so long the Attorney does not exceed his right. There is no scanty material on record which could be attested with ability that the attorney acted behind his power. There is no slender material to prove prima facie that the constituted Attorney participated in illegal execution. Thus, the cheque, since issued by the revisionist No. 2, cannot exonerate the revisionist No. 1 from the offence complained of. She will only bear the fruit but not the burden for the act of his or her agent is an argument is founded.

8. Returning to examine the offence in question, prima facie, it is undisputed that a cheque when issued by a person under authority in respect of an account maintained by the principle with the bank for payment of any amount of money to another person out of the said account for the discharge of debt in whole or in part or other liabilities is returned by bank with the endorsement that it exceeded arrangement it amounts to dishonour within the meaning of Section 138 of the N.I. Act. On issuance of the notice by the payee or the holder in due course after dishonour to the drawer demanding payment within 15 days from the date of receipt of such notice, If he does not pay the same, the, statutory presumption of dishonest intention subject to any other liability stands satisfied. Once the cheque has been drawn and issued to the payee in discharge of debt and the payee has presented the cheque to the bank for encashment and the cheque, since dishonoured, could attribute to any liability. It is an idle plea that the cheque issued by the constituted Attorney will put a lid on the liability of the principle as in the instant case. The apex Court in *Electronics Trade & Technology Development Corporation Limited, Secunderabad v. Indian Technologists & Engineers Electronics Private Limited and Ors.* 1996 C Cr Lr 83 held the effect of a cheque being dishonoured after its presentation to the bank and the liabilities occurred therefrom.

9. In the instant case, the statutory notice prima facie was served upon the revisionist on 20.7.94 demanding payment of the same within 15 days liabing them to an action in default of payment. The demand prima facie has not been obeyed, but disregarded. Therefore, the presentation of the complaint for taking cognizance of the offence stricken with illegality is an argument few and far between. It is not only ludicrous but also preposterous as the law does not encompass such a sterile plea.

10. Further we must bear in mind that there is no shred of obscurity that the constituted Attorney participated in illegal execution. Thus, I cannot accept the contention of Mr. Talukdar and overrule it The contention made by Mr. Roy for the respondent opposite party, therefore, bears considerable force which is sustained.

11. The quashing of proceeding is an extraordinary step which should be exercised by the High Court sparingly, keeping in view, the guidelines laid down by the Supreme Court in a large number of cases. In quashing the proceedings, there is an insuperable obstacle on the High Court in evaluating the genuineness and reliability when allegations are made in the FIR or the complaint. The position has been clarified by the apex Court again in *R.S. Raghunath Vs. State of Karnataka* and another, that an FIR or complaint may be quashed, if the allegations made therein are so absurd and inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proving against the accused. The prima facie materials disclosed constituted commission of a cognizable offence where the court would be slow for quashing the proceedings.

12. In the result, the revision fails. In fine, the decision arrived at by me in the

aforesaid revision shall govern the criminal revision being criminal revision N0.66 of 1995. Ad interim stay, if any, granted stands vacated in both the revisions.