
(2003) 05 OHC CK 0028

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 1817 of 2002

Sri Anand Kumar Suraj Ratan Mohatta

APPELLANT

Vs

Utkal Steel Ltd. and Another

RESPONDENT

Date of Decision : 16-05-2003

Acts Referred:

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

Citation : (2003) 05 OHC CK 0028

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : B. Pr. Das, D.N. Mohanty, Md. Zamir, S.K. Mishra, for the Appellant;
S.K. Mund, D.P. Das, S.K. Joshi, J.K. Panda, P.K. Ray and S. Panigrahi, for the
Respondent

Final Decision : Dismissed

Judgement

B.P. Das, J.—This is an application u/s 482 Code of Criminal Procedure for quashing the proceeding in I.C.C. No. 150 of 2001 pending in the Court of the S.D.J.M., Panposh, wherein cognizance of the offence punishable u/s 138 of the Negotiable Instruments Act has been taken and process has been issued against the Petitioner.

2. The case of the Petitioner is that he was the Managing Director of M/s Mohatta and Heckel Ltd., a company registered under the Companies Act, 1956 having its registered office at Mustafa Building, Sir P.M. Road, Mumbai and engaged in the business of manufacturing/production of Steel wire products and its works at Khopoli in the district of Raigad of the State of Maharashtra.

3. The opposite party No. 1-Company is carrying on the business of manufacturing/production of iron and Steel products at Santoshpur, Bisra in the district of Sundargarh having its registered office Uditnagar, Rourkela in the State of Orissa.

4. The Petitioner-company entered into business transaction with opposite party No. 1-Company during the year 1995 and by virtue of the said transaction, opposite party No. 1 supplied raw materials in the form of iron and Steel wire and Steel rods and the Petitioner Company sold finished steel wire products manufactured by its factory at Khopli, which was continued upto the end of 1999. During that period various memoranda of understanding and agreements were executed between the Petitioner-Company and the Director of opposite party - company regarding business transaction and during such transaction in the year 1998, the Directors of opposite party Company suggested to the Petitioner to open an account in U. Co. Bank, Rourkela in which the opposite party No. 1-Company was also having its account. This arrangement was done in order to facilitate the Petitioner-Company to collect its dues from its customers and deposit the same in the said account and upon such deposit the opposite party-company would transfer equivalent amount their account through cheques issued by the Petitioner's company towards payment for supplying the raw materials. It is further argued that Directors of opposite party No. 1- Company requested the Petitioner-Company to issue blank cheques which would be used to transfer the amounts deposited in U. Co. Bank, Rourkela through collections made from the customers of Petitioner-Company. This was done, as stated by the learned Counsel for the Petitioner, with an intention that whenever Directors of opposite party No. 1-Company made collections from the customers of Petitioner-Company they would know the amount collected and would deposit the same in the said bank in the name of Petitioner-Company and thereafter withdraw the equivalent amount by putting the amount in the blank cheque. According to him all these had been done in good faith, but while the things stood thus, the Directors of opposite party No. 1-Company who are also partners of one of its sister concern namely M/s. S.L. Agarwal Co. entered into a conspiracy to present two blank cheques issued by the Petitioner-Company by filling up the amount of Rs. 1 Crore in each of the cheques with payee's name as opposite party Company and its sister concern respectively. The Petitioner and other Directors of the Company came to know about the presentation of such cheque by the opposite party No. 1-Company when they received notices dated 8.10.2001 individually. In spite of reply of the Petitioner clarifying the position, a complaint was lodged and cognizance was taken u/s 138 read with Section 141 of the Negotiable Instrument Act.

5. The plea of Petitioner is that filling up the amount of one crore in the blank cheque is an act of forgery of valuable instrument inasmuch as, the opposite party No. 1-Company was not authorised to fill up any amount arbitrarily but to present the cheque as per the arrangement and undertaking. That apart as the Petitioner-Company is registered with the BIFR, it is not even within its authority to issue cheque of Rs. 1 crore for any alleged outstanding.

6. The sum of substance of the case of the Petitioner is that the institution of the case is malafide with sole intention of the opposite party No. 1 to harass the Petitioner and other Directors and coerce them to pay the opposite party-

Company for which a prayer is made to quash the cognizance.

7. Law is well settled that the High Court can in exercise of its inherent jurisdiction quash a criminal proceeding only when the allegations made in the complaint do not constitute an offence or that the exercise of the power is necessary either to prevent the abuse of the process of the Court or otherwise to secure the ends of justice See Smt. Chand Dhawan Vs. Jawahar Lal and others,

8. Here is a case where the contention of the Petitioner is that there is no liability to the tune of the amount for which the cheque in question was drawn and there is no question of the Petitioner issuing a cheque in favour of the complaint.

9. In the case of M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, , the apex Court held as follows:

... It is settled law that at this stage the Court is not justified in the embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer any arbitrary jurisdiction on the Court to act according to its whim or caprice. At this stage the Court could not have gone into merits and/or come to a conclusion that there was no existing debt or liability".

10. In view of the law laid down by the apex Court in the aforesaid decision and in view of the fact that the submissions advanced and grounds taken by the accused can be very well examined in course of the trial, I am not inclined to interfere with the order of cognizance taken against the accused-Petitioner. Accordingly, the Criminal Misc. Case fails and is dismissed.

11. However, learned Counsel, for the Petitioner in course of hearing submitted that the Managing Director of Petitioner-Company is an outsider and he may be released on bail on his surrender. Considering the prayer of the learned Counsel for the Petitioner, I direct that if the accused surrenders before the S.D.J.M., Panposh or the Magistrate in his charge, within a period of four weeks hence, he shall be released on bail for an amount of Rs. 50,000/- with two sureties each for the like amount to the satisfaction of the learned Magistrate in I.C.C. No. 150 of 2001.