(2007) 08 DEL CK 0204

In the Delhi High Court

Case No : Criminal M.C. No. 137 of 2004

Standard Chartered Bank and Another — APPELLANT

Vs

State and Another — RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2008) 1 CivCC 442 : (2007) 98 DRJ 71 : (2007) 4 ILR Delhi 83 : (2008) 1 RCR(Criminal) 148

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Ravinder Sethi and Sanjay Gupta, for the Appellant; H.M. Singh and Kushal Yadav, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Learned Counsel for the petitioners states that inadvertently Karuna Bhatia, Business Manager was not impleaded as petitioner No. 2 inasmuch as counsel for the petitioners thought that as Karuna Bhatia had filed the petition on behalf of Standard Chartered Bank, the petition would enure to the benefit of Karuna Bhatia as well.

2. Learned Counsel for the petitioners concedes that the belief of learned Counsel for the petitioners is in sweet ignorance of law.

3. Suffice would it be to state that where a company and the living human being stated to be in charge and control of the affairs of the company are impleaded as accused persons, each is an accused in its/his individual capacity and each must take recourse to legal remedy available as per law.

4. Be that as it may, amended memo of parties is taken on record. Ms. Karuna Bhatia is impleaded as petitioner No. 2.

5. Petitioners are aggrieved by the fact that they have been summoned to face

trial in a complaint filed by respondent No. 2 u/s 138 of the Negotiable Instruments Act 1881.

6. First petitioner is Standard Chartered Bank. Second petitioner is Ms. Karuna Bhatia, Manager of its branch at Greater Kailash Part-I.

7. Basis of the complaint is the dishonour of a banker''s cheque dated 3.3.2003 drawn on first petitioner and issued by its Manager i.e. petitioner No. 2.

8. M/s. A.D. Exports Pvt. Ltd. had an account with petitioner No. 1 at its branch at Greater Kailash Part-I. On 30.1.2003, alleging that M/s. A.D. Exports Pvt. Ltd. was a defaulter, in that, had not paid income tax dues to the income tax authorities, tax recovery officer issued a warrant of attachment, attaching the account of M/s. A.D. Exports Pvt. Ltd.

9. The said notice was addressed to first petitioner at its corporate office.

10. On 11.2.2003, the tax recovery officer intimated petitioner No. I that notwithstanding the attachment, no amount was received by the income tax authorities. First petitioner was advised to remit the money lying in the account of M/s. A.D. Exports Pvt. Ltd.

11. Notwithstanding the attachment, on 3.3.2003, M/s. A.D. Exports Pvt. Ltd. got prepared a banker''s cheque in sum of Rs. 4,86,000/- payable in favour of M/s. Omniplast Pvt. Ltd. and handed over the pay order to said company. The same was issued by petitioner No. 2.

12. When presented for encashment, the cheque was returned without being honoured vide return memo dated 12.3.2003 with the instructions ''Refer to Drawer''.

13. M/s. Omniplast Pvt. Ltd. caused to be served upon the petitioners a notice dated 24.3.2003 calling upon the noticee to honour the cheque by making payment in sum of Rs. 44,86,000/-.

14. Aforesaid notice was replied by the petitioners on 7.3.2003 informing that the banker''s cheque was issued erroneously as the account of M/s. A.D. Exports Pvt. Ltd. had been attached by the income tax authorities much prior to the date when banker''s cheque was issued.

15. M/s. Omniplast Pvt. Ltd. filed a complaint u/s 138 of the Negotiable Instruments Act, inter alia stating that once the banker had debited the account of the client and had issued the banker''s cheque, liability to pay was taken over by the banker, thus, it was prayed that action as per law be taken against the petitioners.

16. As a proposition of law, it would be a correct statement to make, that once a bankers debits the account of its customer and issues either a bank draft or a banker''s cheque and the said negotiable instrument reaches the hands of the payee, when presented for encashment, the bank has to honour the same.

17. However where, as in the instant case, the banker''s cheque is issued after debiting the account of the customer but after the account has been lawfully attached by an authority competent to attach the account, issuance of the pay order being the result of an oversight or a negligence, different issue would arise for consideration; viz., whether the officers of the bank as also the banker would be liable under the tort of negligence.

18. A complaint u/s 138 of the Negotiable Instruments Act 1881 is not founded on the tort of negligence.

19. Sine qua non for liability u/s 138 of the Negotiable Instruments Act 1881 is return of a cheque, unpaid by the banker either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that the cheque exceeds the amount arranged to be paid from that account by an agreement between the account holder and the bank.

20. The complaint does not "state that the banker''s cheque was dishonoured on account of either of the two grounds on which an action can be founded u/s 138 of the N.I. Act.

21. As noted above, the banker had duly informed the complainant when notice of demand was served that the banker''s cheque was not being honoured because the account of the customer had been attached by the income tax authorities and notwithstanding said attachment, by mistake, the banker''s cheque in question was issued. Thus, on a mere reading of the complaint it would be evident that cognizance of the complaint could not have been taken by the learned Magistrate.

22. I clarify once again that tort of negligence is not an ingredient of an offence u/s 138 of the Negotiable Instruments Act 1881.

23. The petition is accordingly allowed.

24. Summoning order against the petitioners and the criminal complaint filed by M/s. Omniplast Pvt. Ltd. u/s 138 of the Negotiable Instruments Act 1881 are quashed.