
(2001) 08 P&H CK 0174

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 33795-M of 2000

Steel Authority of India Ltd.

APPELLANT

Vs

B.D. Aggarwal and Sons Ltd.

RESPONDENT

Date of Decision : 16-08-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Negotiable Instruments Act, 1881 (NI) — Section 138 , 139, 140, 141, 142

Citation : (2001) 3 CivCC 587 : (2002) CriLJ 382 : (2001) 4 RCR(Criminal) 439

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : Navdeep Singh, for the Appellant; Pankaj Bhardwaj, for the Respondent

Final Decision : Allowed

Judgement

V.M. Jain, J.—This is a petition u/s 482, CrPC, filed by the complainant-petitioner, seeking quashment of the order dated 24.7.2000, passed by the Additional Sessions Judge, Jalandhar, accepting the revision petition of the accused-respondent, M/s BD Aggarwal and Sons Limited and setting aside the order of summoning dated 24.3.1998, passed by the CJM, Jalandhar, by which the accused were ordered to be summoned u/s 138 of the Negotiable Instruments Act (hereinafter referred to as the Act) in the criminal complaint, filed by the present petitioner, M/s Steel Authority of India Limited.

2. The facts of this case, in brief, are that M/s Steel Authority of India Limited (complainant) filed a criminal complaint dated 26.10.1998, copy Annexure P2, against accused No. 1, BD Aggarwal and Sons Limited, u/s 138 of the Act, through Sh. Parmod Kumar Aggarwal, its Director and seven other persons, being the Directors and other Officers of the said firm (in all there were eight accused). In the said complaint, it was alleged that in pursuance of the memorandum of understanding, arrived at between the parties, accused No. 1 Company had been purchasing material from the complainant Company from

time to time on credit, which included the supply of material of the total invoice value of Rs. 8,96,256/-. It was alleged that in order to discharge the aforesaid legal liability, the accused issued a cheque No. 86876 dated 29.7.1996 for Rs. 8,96,256/- in favour of the complainant Company, drawn on the State Bank of India, New Railway Road Branch, Jalandhar, assuring that on presentation, the said cheque shall be honoured, it was alleged that the said cheque was presented for encashment on 31.8.1996 through State Bank of India, Main Branch, but the same was returned unpaid, on the ground that the payment had been stopped by the drawer. It was alleged that the said intimation was received by the complainant on 3.9.1996. It was alleged that on receipt of this information regarding dishonouring of the cheque, legal notice dated 16.9.1996 was served upon the accused, calling upon them to make the payment for the aforesaid dishonoured cheque, but despite the service of the said notice, the accused had not made any payment to the complainant and had thereby committed the offence u/s 138 of the Act. It was alleged that accused Nos. 2 to 6 were Directors of accused No. 1 Company, whereas accused Nos. 7 and 8 were the Finance Executive and Authorised Dealing Representative, respectively, of accused No. 1 Company and had been actively engaged in the day-to-day business of accused No. 1 Company. It was alleged that they all were the persons incharge of and were responsible to the said Company for the conduct of its business and as such, all these accused were liable for the commission of offence u/s 138 of the Act. After recording preliminary evidence, the learned CJM, vide order dated 24.3.1998, copy Annexure P3, ordered the summoning of all the eight accused for the offence u/s 138 of the Act. Aggrieved against the said order of summoning passed by the learned CJM, one of the accused, namely M/s BD Aggarwal and Sons Limited, through its Director, Mohar Singh Kaushal, filed a revision petition before the Sessions Court, challenging the order dated 24.3.1998, passed by the learned CJM, ordering summoning of the accused for the offence u/s 138 of the Act. The said petition was contested by the complainant, by filing a written statement, copy Annexure P4. The learned Additional Sessions Judge, after hearing both the sides, accepted the revision petition and set aside the summoning order, passed by the learned Magistrate and dismissed the complaint, vide order dated 24.7.2000. Aggrieved against this order of the learned Additional Sessions Judge, the complainant, M/s Steel Authority of India Limited, filed the present petition u/s 482, CrPC, in this Court, seeking quashment of the abovesaid order dated 24.7.2000, passed by the learned Additional Sessions Judge.

3. I have heard learned counsel for the parties and gone through the record carefully.

4. Learned counsel for the complainant-petitioner submitted before me that the learned Additional Sessions Judge, while accepting the revision petition of accused-respondent, M/s BD Aggarwal and Sons Limited, had failed to take notice of the provisions of Section 139 of the Act. It was submitted that u/s 139 of the Act, there was a presumption (unless contrary is proved) that the holder

of a cheque received the cheque of the nature referred to in Section 138 for the discharge in whole or in part of any debt or other liability. It was submitted that the learned Additional Sessions Judge, while accepting the revision petition and setting aside the order of summoning, passed by the learned Magistrate, observed that in order to attract the provisions of Section 138 of the Act, the cheque should be issued for existing enforceable liability and that it was the admitted case of the parties that the accused had been purchasing material from the complainant party and the amount was due from him and, therefore, it was a civil dispute. It was submitted that the learned Additional Sessions Judge had further erred in law in holding that the mere fact that the accused was to pay the amount of the Company, would not be sufficient to hold that this cheque was issued for legal enforceable liability. It was submitted that the entire approach of the learned Additional Sessions Judge was contrary to the provisions of Section 139 of the Act.

5. After hearing counsel for the parties and perusing the record, in my opinion, there is considerable force in these submissions of the learned counsel for the complainant-petitioner. Section 139 of the Act reads as under :-

"Presumption in favour of holder. - It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

6. From a perusal of the above, it would be clear that unless the contrary is proved, it shall be presumed that the holder of a cheque had received the cheque, referred to in Section 138 of the Act, for the discharge in whole or in part of any debt or other liability. Thus, there is a presumption in favour of the complainant party to the effect that the cheque in question, which was dishonoured, had been issued by the accused to the complainant, for the discharge, in whole or in part, of by debt or other liability and that the words "debt or other liability" would mean a legally enforceable debt or other liability as mentioned in Section 138 of the Act. However, the accused can rebut the said presumption by proving otherwise. In the present case, the complainant had filed the criminal complain u/s 138 of the Act. After recording preliminary evidence, the learned CJM had ordered the summoning of the accused for the aforesaid offence, vide order dated 24.3.1998. One of the accused namely M/s BD Aggarwal and Sons Limited, through its Director Mohar Singh Kaushal, had filed a revision petition before the Sessions Court, challenging the order of summoning. The case was still at the preliminary stage. There was no occasion for the accused to have rebutted the presumption raised u/s 138 of the Act by proving to the contrary to rebut the said presumption. In the entire order dated 24.7.2000, passed by the learned Additional Sessions Judge, there is not even a reference to the provisions of Section 139 of the Act, which raises a presumption that the cheque, which was dishonoured, was issued for the discharge of a legal enforceable debtor other liability, unless contrary is proved. Instead of deciding the case, keeping in mind the presumption raised u/s 139 of the Act, the learned

Additional Sessions Judge proceeded to decide the revision petition by observing that it was a civil dispute, because admittedly, the accused had been purchasing material from the complainant party and the amount was due from the accused. In my opinion, this observation, made by the learned Additional Sessions Judge, is against the very purpose, for which Sections 138 to 142 of the Act were enacted by the Parliament, by amending the Act in the year 1988 (Act No. 66 of 1988) w.e.f. 1.4.19.89. Even if there is a civil dispute between the parties and the accused have issued a cheque for the payment of the amount in question and if the cheque has been dishonoured, it would be an offence u/s 138 of the Act. The learned Additional Sessions Judge failed to take this fact into consideration while deciding the present case.

7. Furthermore, the learned Additional Sessions Judge observed that the mere fact that the accused was to pay the amount of the Company, was not sufficient to hold that this cheque was issued for the legally enforceable liability. Again, as referred to above, this observation made by the learned Additional Sessions Judge is contrary to the provisions of Section 139 of the Act, whereby there is a presumption that the cheque in question had been issued for the discharge of a legally enforceable debt or other liability, unless contrary is proved by the accused. In the present case, at the stage of hearing the revision petition, there was no occasion for the accused to have rebutted the presumption and there was no occasion for the learned Additional Sessions Judge to have held that the mere fact that the accused was to pay the amount of the Company, was not sufficient to hold that the cheque was issued for the legally enforceable liability.

8. Furthermore, in the judgment dated 24.7.2000, the learned Additional Sessions Judge, had come to the conclusion that the circumstances support the version of the accused that there was blank cheque with the complainant party, which was used by the complainant and as such, it could not be held that the cheque was issued by the accused for the legally enforceable liability, on the date it was alleged to have been issued. In my opinion, this observation, again, made by the learned Additional Sessions Judge, is contrary to law. At the revisional stage, there was absolutely no occasion for the learned Additional Sessions Judge to have made this observation, when the case was at the initial stage and the accused had been summoned by the learned CJM, on the basis of the allegations made in the criminal complaint and the preliminary evidence led by the complaint. The question as to under what circumstances the amount of interest was added in the cheque, could not have been gone into by the learned Additional Sessions Judge, in the revision petition against the order of summoning passed by the learned Magistrate, to hold that it was a blank cheque, which was used by the complainant party.

9. In *Hiten P. Dalal v. Bratindranath Banerjee*, 2001 (3) RCR 460, it was held by the Hon'ble Supreme Court that the presumption, which arose u/s 138, provided more specifically that where any cheque, drawn by a person on an account for payment of any amount of money for the discharge in whole or in part of any

debt or other liability, was returned by the drawer Bank unpaid, either because of the amount of the money standing to the credit of that account was insufficient to honour the cheque, such persons shall be punished with imprisonment. It was further held in the said authority that the nature of the presumption u/s 138 was subject to the three conditions specified relating to presentation, giving of the notice and the non-payment after receipt of notice by the drawer of the cheque.

10. In *Modi Cements Limited v. Kuchil Kumar Nandi* 1992 (2) RCR 77 : 1999 SCC 252, it was held by the Hon''ble Supreme Court that once a cheque was issued by the drawer, a presumption u/s 139 must follow. It was held by the Hon''ble Supreme Court that the burden was on the accused to rebut the aforesaid presumption.

11. In view of the law laid down by the Hon''ble Supreme Court in the abovesaid authorities, in my opinion, the learned Additional Sessions Judge had committed an illegality in ignoring the presumption that the cheque was issued for existing legally enforceable liability, which presumption would be rebutted at the appropriate stage by the accused, by proving to the contrary. However, at this stage, the learned Additional Sessions Judge was not competent to set aside the order of summoning passed by the learned Magistrate, by holding that the complainant had failed to prove that the cheque was issued for the existing legally enforceable liability.

12. Furthermore, the learned Additional Sessions Judge, while accepting the revision petition, vide order dated 24.7.2000 and setting aside the order of summoning, passed by the learned Magistrate, had also held that in the present case, there was no evidence to show that the cheque was dishonoured on account of insufficient funds and as such, Section 138 of the Act was not attracted and in the absence of anything to show that there were insufficient funds, no offence u/s 138 of the Act was made out. In my opinion, this finding given by the learned Additional Sessions Judge, is just contrary to the law laid down by the Hon''ble Supreme Court in *Modi Cement Limited v. Kuchil Kumar Nandi*'s case (supra). In this authority, the Hon''ble Supreme Court had over-ruled various authorities taking a contrary view and it was held that even if a cheque was dishonoured because of stop-payment instructions to the Bank, Section 138 of the Act would get attracted. It was further held that the position was not different where the drawer had instructed the Bank to stop payment prior to the presentation of the cheques for encashment, as in the reported case. It was further held that once a cheque was issued by the drawer, a presumption u/s 139 must follow and merely because the drawer issued a notice to the drawee or to the Bank for stoppage of payment, it will not preclude an action u/s 138 of the Act by drawee or the holder of a cheque in due course.

13. In *NEPC Micon Ltd. and Ors. v. Magma Leasing Ltd.* 1996 (1) RCR 593 : 1999 SCC 524, the Hon''ble Supreme Court had reiterated the law laid down by their Lordships of Supreme Court in *Modi Cement*'s case (supra). It was held that if the cheque was dishonoured because of "stop-payment" instructions to the Bank,

still Section 138 of the Act would be attracted inasmuch as it also amounted to dishonouring of the cheque within the meaning of Section 138 of the Act, when it was returned by the Bank with the endorsement like "referred to drawer", "instructions for stoppage of payment" and "exceeds arrangement". It was further held that once the cheque was issued by the drawer, a presumption u/s 139 must follow and merely because the drawer issued a notice to the drawee or to the Bank for stoppage of payment, it will not preclude an action u/s 138 of the Act. It was further held that it will make Section 138 of the Act a dead letter, if the contention that by giving instructions to the Bank to stop payment immediately after issuing a cheque against the debt or liability, the drawer could easily get rid of the penal consequences notwithstanding the fact that deemed offence was committed. It was further held that Section 138 of the Act got attracted when the cheque was dishonoured.

14. In view of the law laid down by the Supreme Court, in the abovementioned authorities, in my opinion, the learned Additional Sessions Judge was legally not justified in holding that in the present case, there was no evidence that the cheque was dishonoured on account of insufficient funds or that Section 138 of the Act was attracted, in cases of stop-payment only when there were also insufficient funds. In my opinion, the learned Additional Sessions Judge was not legally right when he observed that since the complainant did not produce an account of the accused to prove that there were insufficient funds and since the cheque was not dishonoured on account of insufficient funds, no offence u/s 138 of the Act was made out (in the present case, the cheque was dishonoured on the ground that the payment was stopped by the drawer). As held by the Hon"ble Supreme Court, even if the payment had been stopped by the drawer of the cheque, still offence u/s 138 of the Act was made out and it was not necessary for the complainant to show that there were insufficient funds with the accused at the time when the cheque was dishonoured.

15. No other point has been urged before me in this petition.

16. For the reasons recorded above, the present petition is allowed, the order dated 24.7.2000, passed by the learned Additional Sessions Judge, Jalandhar, is set aside that the case is sent back to the learned Magistrate to proceed further in the matter in accordance with law.

17. Parties, through their counsel, are directed to appear before the trial Court on 17.9.2001 for further proceedings, in accordance with law.

18. In the present case, since the learned Magistrate had ordered the summoning of all the accused, vide order dated 24.3.1998, the learned Magistrate shall proceed further in the matter in accordance with law.

19. Petition allowed.