

(1999) 04 AHC CK 0029
In the Allahabad High Court
Case No : Criminal Revision No. 1513 of 1995

Steel Authority of India Ltd.	Vs	APPELLANT
Harbhajan Singh and Others		RESPONDENT

Date of Decision : 19-04-1999

Acts Referred:

Companies Act, 1956 — Section 130, 138, 142
Criminal Procedure Code, 1973 (CrPC) — Section 200, 203, 204, 482

Citation : (1999) 3 CivCC 45 : (1999) CriLJ 3372 : (1999) 4 RCR(Criminal) 40

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : G. C. Bhattacharya, Tarun Bhattacharya and P.N. Mishra, for the Appellant; A.G.A. and M.D. Singh, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—This is a revision against the order, dated 13-10-1995 passed by Sri Chaturbhuj, the then 1st Additional Chief Judicial Magistrate, Ghaziabad in Criminal Complaint No. 2263 of 1995, Steel Authority of India v. Harbhajan Singh insofar as it refused to summon the present Opp. Parties 1 to 5 and dropped the proceedings against them.

2. I have heard the counsel for the parties and have also gone through the record.

3. The revisionist Steel Authority of India Ltd. filed Criminal Complaint No. 2263 of 1995 before the A.C.J.M. Ghaziabad against Har Bhajan Singh, Deepak Singh, Mohinder Singh, S. K. Bansal, S. K. Agrawal, Narendra Agrawal and Atma Steels Ltd., a Company registered under the Companies Act u/s 138 read with Section 142 of the Negotiable Instruments Act, 1985 alleging that it supplied steel material to the said Company worth Rs. 16,68,71,100.00, that against it only a sum of Rs. 12,95,00,297.00, had been paid and that despite repeated request and reminders accused No. 7 did not arrange the payment of the balance amount of Rs. 3,73,69,003.00 only to it (the complainant), that the accused No. 7

through other accused persons (to) honour the commitment to pay the balance amount the complainant was instructed to present the cheque No. 412256 dated 1-3-1995 for Rs. 3,87,08,687/- to the Bank of Baroda, Gandhi Nagar Branch, through complainant's Banker State Bank of India, but the said cheque was returned unpaid by the Banker of the Accused vide memo dated 24-7-1995 with the remarks "payment stopped by drawer", that it (the complainant) consequently served legal notices on the accused persons on 27-7-1995 respectively by registered post calling upon all of them to make payment of the aforesaid amount within 15 days as permissible under law from the date of receipt of the said notice, that the said notices were received by all the accused on 31-7-1995 but all of them have failed to respond to any of the notices within the said statutory period of 15 days of the receipt of the same. It was alleged in the complaint that the accused No. 1 is the Chairman-cum-Managing Director of M/s. Atma Steels Ltd. having its registered office at C-138-142 Industrial Area No. 1 Bulandshahar Road, P. S. Kavinagar, the accused No. 2 is the Executive Director of accused No. 7, accused No. 3 is the General Manager of accused No. 7, accused No. 4 is the Deputy General Manager (Finance) of the accused No. 7, accused No. 5 is the authorised signatory on behalf of accused No. 7 and accused No. 6 is the purchase officer of the accused No. 7, all the accused persons 1 to 6, mentioned above were the persons in charge of and responsible to Company i.e. accused No. 7 for the conduct of the business of the Company at the time when the offence was committed. Accused Nos. 1 and 2 are particularly responsible for the conduct of the affairs of the business and management of the company in their capacity as Chairman-cum Managing Director and Executive Director of the Company, that accused No. 7 entered into a memorandum of understanding with the complainant on 2-2-1995, though accused Nos. 1 and 2 for the purpose of purchasing iron and steel materials on interest free credit basis for a particular period and also agreed to pay interest @ 18/19% for any such credit beyond the said credit period, that the accused Nos. 1 and 2 induced the complainant by executing the personal guarantee Bond on 1st April, 1994 having agreed to pay for the goods supplied on credits in case of default of the accused No. 7. They also furnished a post dated cheque by accused Nos. 4 and 5 for meeting the outstanding balance arising out of the materials transacted to be sold and delivered.

4. In the complaint case, the complainant examined Abhijeet Bose branch manager of its branch sale office, Ghaziabad u/s 200, Cr. P. C. He narrated on oath the entire case of the Steel Authority as set out in the complaint. The Steel Authority of India also examined V. P. Gupta, Deputy Chief Finance Manager in its Branch Sale Office aforesaid u/s 200, Cr. P. C. He also narrated the responsibilities of the different accused persons in the said Atma Steel Ltd. and also narrated the liability of these person for non-discharge of the same and the service of notices under the Negotiable Instruments Act and the non-compliance thereof. Apart from it, the Steel Authority of India had filed before the learned Magistrate numerous documents in support of its case whose copies have already

been placed on the record of this revision as Annexure 4, 5, 9, 10, 11, 12, 13 and 14 to the supplementary affidavit of S. K. Saxena filed by it.

5. The learned Magistrate even while summoning S. K. Bansal and S. K. Agrawal, accused Nos. 4 and 5 in the complaint declined to summon the remaining accused on the ground that the complainant has not made it clear from any evidence as to who had issued the cheque and who had been authorised by the Atma Steel Company Ltd. to issue the cheque and that the material on record of the file did not disclose as to what has been the contribution of the accused No. 1 (HarBhajan Singh), accused No. 2 (Deepak Singh), accused No. 3 (Mohinder Singh), and accused No. 6 (Narendra Agrawal) in the issuing of the cheque.

6. This present revision has, therefore, been filed by the Steel Authority of India, aggrieved by the part of the order of the learned Magistrate insofar as it declined to summon the aforesaid accused person HarBhajan Singh, Deepak Singh, Mohinder Singh, Narendra Singh and the Company Atma Steel Ltd.

7. I have heard the learned counsel for the parties including the learned A.G.A. appearing for the State and have also gone through the record. It cannot be doubted that insofar as the learned Magistrate has declined to summon the aforesaid accused person who have now been made Opp. Parties Nos. 1 to 5 in the present revision his order is a final order subject to revisional jurisdiction of this Court. It has been held in the authority Sheoraj and Others Vs. Emperor, that to amount, to dismissal, it is not necessary that a specific order to that effect should have been passed, that if complaint is made against several persons and summons were issued against only some, it amount to dismissal of the complaint against the others. When a complaint is made against several persons alleging that they have committed several offences, it can be dismissed in respect of some of the persons and that too with regard to particular offences. Such an order is a composite order which comes under Sections 203 and 204, Cr. P. C. (K. K. Suri v. V. N. Mehta 1974 RLR 304).

8. For passing an order for issuing of process, the law is that the Magistrate is to exercise his judicial mind to determine if there is ground for proceeding, keeping in mind that where the allegation in the complaint and the materials in its support to disclose the commission of an offence, then the matter should proceed i.e. the accused ought to be summoned. At this stage, the Magistrate has to determine not the correctness or the probability or improbability of individual items of evidence on disputable grounds but the existence or otherwise of a prima facie case on the assumption that what has been stated can be true unless the prosecution allegations are so fantastic that they cannot reasonably be held to be true D.N. Bhattacharjee and Others Vs. State of West Bengal and Another, In this case, the learned counsel for the accused-revisionist has pointed out to the allegations in the complaint (briefly reproduced above), the oral evidence given under Sections 200, Cr. P. C. and 202, Cr. P. C. and also documentary materials filed on the record of the complaint case which certainly disclosed a prima facie case, a sufficient ground for summoning the accused

persons whom the learned Magistrate has declined to summon. At this stage, it was not necessary to detailed, discussion of the merits or demerits of the case I may refer to an authority of the Apex Court Municipal Corporation of Delhi Vs. Purshotam Dass Jhunjunwala and Others, , that case related to violation of Food Adulteration Act. In that case, the Food Inspector has purchased a sample of milk toffees from the shop of one Jagdish Chandra Mehta, the toffees were found to be adulterated by the public analyst. The toffees were manufactured by the Hindustan Sugar Mills Ltd., Bombay. A complaint was filed before the Magistrate against the 12 accused with the above allegations of facts. The High Court quashed the proceedings on the complaint against the respondent Nos. 1 to 11. In that case, the allegations in the complaint were in the following terms;

That accused Ram Kishan Bajaj is the Chairman, accused R. P. Nayatia is the Managing Director and accused Nos. 7 to 12 are the Directors of the Hindustan Sugar Mills Ltd. and were in charge of and responsible to it for the conduct of its business at time of commission of offence.

The Apex Court held that this gave complete details on the role played by the respondents and the extent of their liability and the Apex Court said that it cannot be said that the said paragraph of the complaint did not implicate respondents Nos. 1 to 11. The Apex Court also said that as to what would be the evidence against the respondents is not a matter to be considered at this stage and would have to be proved at the trial. There the matter of quashing of the proceedings was involved and the Apex Court held that for that purpose the allegations set forth in the complaint were to be seen and nothing further and that further details would have to be given in the shape of evidence when the trial proceed and, therefore, the Apex Court set aside the order of the High Court quashing the proceedings against the accused-respondents u/s 482, Cr. P. C.

9. In this Case, it is clear from the material which are on record before the Magistrate at the time of passing the impugned order that there was sufficient material to proceed against the accused-Opp. Parties Nos. 1 to 5 before this Court.

10. That being so, the impugned order of the learned Magistrate insofar as it refuses to summon the person i.e. Harbhajan Singh, Deepak Singh, Mohinder Singh, Narendra Agarwal and, Atma Steels Ltd., was wholly illegal and cannot be sustained for a moment.

11. Before concluding the matter, I may refer to the provisions of Section 141 of the Negotiable Instruments Act, 1881 which are as under :-

141. Offences by Companies.-(1) If the person committing an offence u/s 130 is a Company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the Company for the conduct of the business of the Company, as well as the Co-m pony, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that not contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where any offence under this Act has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any Director, Manager, Secretary or other Officer of the Company, such Director, Manager, Secretary or other Officer shall also be deemed to be guilty of that offence and shall be proceeded against and punished accordingly.

12. It will be seen that there is a deeming provision in Sub-section (2), it is also clear that it is open for each individual accused-person to prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence, to escape penal liability. However, that stage would come only later.

13. It is clear from the above discussion that the learned Magistrate ought to have summoned all the persons arrayed as accused persons in the complaint and not to have given the escape route to the accused-persons who are the Opp. Parties in the present revision.

14. For the reasons aforesaid, the revision is allowed and the impugned order passed by the learned Magistrate is quashed insofar as it declines to summon the present Opp. Parties Nos. 1 to 5 namely Harbhajan Singh, Deepak Singh, Mohinder Singh, Narendra Agarwal and Atma Steels Ltd. The case is remanded to the learned Magistrate to make further enquiry i.e. to say to reconsider the material on record before him and pass appropriate orders in accordance with law in the light of the observations made in the body of the judgment. The Magistrate shall be expediting the proceedings of this case.

15. Let a copy of this judgment and order be certified by the registry to the learned Magistrate by fax/registered post A.D. for information and compliance.

16. A copy of this judgment and order shall be issued to the learned counsel for the revisionist within a week from today on payment of the usual copying charges.