

(2009) 09 DEL CK 0006

In the Delhi High Court

Case No : Criminal M.C. 2719 of 2004

TSN Marketing (India) Ltd. and Another

APPELLANT

Vs

Super Domestic Dust Busters (P) Ltd. and Another

RESPONDENT

Date of Decision : 14-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 482

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

Penal Code, 1860 (IPC) — Section 420

Citation : (2009) 09 DEL CK 0006

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : No, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—This petition has been filed by the petitioner u/s 482 Cr.P.C. seeking quashing of the summoning order passed by the learned Metropolitan Magistrate vide order dated 23.10.2004 on a criminal complaint instituted in 2000 by the respondent No. 1 u/s 138/141 of the N.I. Act read with Section 420 of the IPC. By the impugned order, the trial Court dismissed the application moved by the petitioner to recall the summoning order at the stage of notice u/s 251 Cr.P.C. relying upon the judgment delivered by the Supreme Court in the case of Adalat Prasad Vs. Rooplal Jindal and Others, The complaint was filed on behalf of the respondent No.1 on the allegations that cheques issued by the petitioner to the complainant against supply of material, i.e., vacuum cleaners against invoices were duly transported and, thereafter, when the cheques were presented, the same were dishonoured by their bankers, i.e., Bank of India, Okhla Industrial Estate Branch, New Delhi of insufficiency of funds. The cheques were presented at the advice of the petitioner again and again but always the cheques were returned unpaid on the ground of insufficiency of funds vide memo dated 21.03.2000, 27.03.2000 and 29.03.2000. A legal notice was served upon the petitioner by the complainant on 10.04.2000 calling upon the

petitioner to pay the amount of Rs. 4,63,060/-, i.e., the amount of the cheque but the petitioners failed to make the payment within the time prescribed and, therefore, the said complaint was filed.

2. It is the case of the petitioner, that the cheques were dishonored because the vacuum cleaners supplied by the complainant were not up to the mark and there were shortages with respect to the supply and it is, therefore, a request was made by them with the petitioner that the cheques may not be presented till the proper quantity and quality of the goods are replaced with the defective ones. This letter is dated 15.06.1999. Even if, for the sake of arguments, it is assumed that such a letter was written by the petitioner, it would be a question of evidence and it will have to be proved by the petitioner, during the course of trial, that such a letter was written and that also before the presentation of the cheque. Defenses cannot be the basis of a petition u/s 482 of the Cr.P.C. for quashing of the complaint.

3. Thus, I do not find any merit in the petition. Even otherwise, nobody has come forward to argue the matter on behalf of the petitioner. Accordingly, the petition is dismissed for non-prosecution as well as on merits for the reasons stated above.

4. A copy of the order be sent to the trial Court, who shall proceed with the trial in accordance with law.

5. Interim orders are vacated.