

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Negotiable Instrument Act

Crl. App. 745/2007

Reserved on : 12.01.2009

Date of decision : 23.01.2009

Mr. Suresh Sharma

APPELLANT
Through: Mr. A.K.Jain, Advocate

Versus

M/s. New Coolwell Industries and Ors. ...RESPONDENT

Through: Mr. Sanjeev Kamra, Advocate

MOOL CHAND GARG, J.

1. The appellant in this matter is aggrieved by the order passed by a Learned Metropolitan Magistrate dated 16.03.2006 whereby, he dismissed the complaint filed by the appellant, by holding that the complaint filed by the appellant in his personal capacity cannot be treated as a complaint by M/s. Jiya Lal Sumair Chand Jain, the payee of the cheques in question. The relevant portion of the order subject matter of the appeal is reproduced for the sake of the understanding the matter. 9. I have heard the arguments of both the parties and perused their written as well as oral submissions. The perusal of the cheques Ex.CW1/2 and Ex. CW1/3 shows that the cheques have been issued by the accused no.1 in favour of M/s. Jiya Lal Sumair Chand Jain and the same were presented for encashment to the banker of the firm and returned back unpaid vide Debit Advise Ex.CW2/1 and Ex.CW2/2. The document Ex.CW1/1 relied upon by the complainant during the examination of the CW1 shows that M/s. Jiya Lal Sumair Chand Jain is the partnership firm and the cheques were issued in its favour and the partner of the firm has authorized the manager (account) of the firm to initiate legal proceedings against the accused with regard to the cheques in dispute. Even the legal notice Ex.CW1/4 was issued on behalf of the firm M/s. Jiya Lal Sumair Chand Jain. All the documents proved by the complainant clearly suggest that the firm M/s. Jiya Lal Sumair Chand Jain payee of the cheque and the firm was having cause-of-action in its favour to initiate the proceedings against the accused for dishonor of the cheque Ex.CW1/2 and Ex.CW1/3. The eligibility criterion prescribed by Section 142 of Negotiable Instrument Act is that the complaint under Section 138 must be by the payee or the holder in due course of sald cheque. The complaint was required to be filed in the name of the firm, who is the payee of the cheque, but the present case has been filed by one Shri Suresh Sharma in his personal capacity just on the basis of document Ex.CW1/1. The things would have been different, if the case would have been filed on behalf of the partnership firm in the capacity of complainant. Because of, the acts of the Authorized Representative may be ratified subsequently but the defect in the complaint cannot be ratified subsequently by the firm. A person may be authorized to initiate criminal prosecution on behalf of the firm, but right to initiate criminal prosecution cannot be transferred in favour of anyone. The complainant in the present case is neither the payee nor the holder of the cheque in the due course as no cheque has been issued in his favour. The complainant to the present complaint has no concern with the accused in his personal capacity as the accused have never committed any offence towards him. The witnesses examined by the complainant are also to the effect that the accused no.1 and M/s. Jiya Lal Sumair Chand Jain were maintaining the account with the Union Bank of India and Indian Overseas Bank respectively, but the complainant has failed to prove that the cheques in dispute were issued in his favour and the same were presented by him and dishonoured on presentation. Even during the course of arguments, the complainant has failed to prove, how he has become the holder of the cheque in due course without impleading the partnership firm as complainant. In the absence of firm M/s. Jiya Lal Sumair Chand Jain, the complainant

has no locus-standi to file the present complaint as he has no cause of action in his favour to initiate the criminal proceedings against the accused. 11. After considering the material available on record, I am of the considered opinion that the complaint filed by the complainant of the present complaint is not maintainable and the same deserve dismissal. I hereby dismiss the complaint filed by the complainant, Sh. Suresh Sharma and acquit all the accused persons from the charges leveled against them. The bail bond stands cancelled. Surety discharged. File be consigned to Record Room.

2. The appellant has assailed the aforesaid order on the ground that as per exhibit CW1/1 the appellant was authorized to file the complaint on behalf of M/s. Jiya Lal Sumair Chand Jain in whose favour the cheques in question were issued by the first respondent which were returned uncashed by the bank with remarks exceeds arrangements.

3. The appellant submits that in view of Section 141 of the N.I. Act the Court is empowered to take cognizance of a complaint preferred by a firm, or a company under Section 138 of the Negotiable Instruments Act even filed by a manager of the company. It is, thus, submitted that the order passed by the Learned Metropolitan Magistrate is not sustainable because from the body of the complaint it is clear that the complaint was filed by the appellant not in his personal capacity but on behalf of the M/s. Jiya Lal Sumair Chand Jain. In this regard reference has been made to paragraph 1 of the complaint where it is stated, That the complainant is working as Manager Accounts with M/s. Jiya Lal Sumair Chand Jain, 3551, Chawri Bazar, Delhi 110006 and actively engaged in its day-to-day business activities and more specifically the sale and recovery of amount of the said firm.

4. The petitioner has relied upon the following judgments in support of his case, i.e.: i) AIR 2002 Supreme Court 182 titled as MMTTC Ltd. and Anr. Vs. M/s Medchi Chemicals and Pharma (P) Ltd. and Anr. ii) 1995 Rajdhani Law Reporter 286 (Supreme Court) Case titled as Sudhir Engg. Co. Vs. Nitco Roadways iii) P. Shivaram Vs. D. Bhaskaran. (madras High Court) Crime XII-1992 (3) iv) II (1998) Banking cases 196 (madras High Court) case titled as Sagayadurai and Ors. Vs. J.D. Electronics and Ors.

5. On the other hand the counsel appearing for the respondents have submitted that in the present case there is no evidence available on records which may justify that the complaint filed by the appellant was on behalf of the firm M/s. Jiya Lal Sumair Chand Jain. There is no evidence available to support the contentions that the petitioner filed the same as an authorized representative of M/s. Jiya Lal Sumair Chand Jain. No representative of the aforesaid firm has appeared in the witness box to ratify the filing of the complaint filed by the petitioner/appellant. There is also nothing on record to show that the appellant was working as a Manager and was competent to file such a complaint.

6. I have heard the submissions of both the sides and I have perused the records of the trial court, the certified copies of which have been also filed by the appellant along with his appeal.

7. Before advertng to the records of the case, I would first like to deal with the judgments relied upon by the appellants. In AIR 2002 SC 182 where a complaint was filed on behalf of the company by a manager and the complaint was quashed on the ground of their being no authorization, Honble Supreme Court made the following observations. 10. In our view the reasoning given above cannot be sustained. Section 142 of the Negotiable Instruments Act provides that a complaint under Section 138 can be made by the payee or the holder in due course of the said cheque. The two complaints, in question, are by the appellant company who is the payee of the two cheques. 11. This Court has as far back as, in the case of Vishwa Mitter v. O.P.Poddar reported in (1983) 4 SCC 701, held that it is clear that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance. It has been held that no Court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. It has been held that if any special statute prescribed offences and makes any special provision for taking cognizance of such offences under the statue, then the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. In the present case the only eligibility criterion prescribed by Section 142 is that the complaint must be by the payee or the holder in due course. This criterion is satisfied as the complaint is in the name and on behalf of the appellant company.

8. As far as the aforesaid judgment is concerned, the same is not applicable in the facts of this case because it is not a case where the Magistrate has not taken a cognizance on the basis of the complaint filed by the applicant but it is after the evidence was recorded, the Court being not satisfied with the authority of the appellant to file such a complaint and the complaint not being in the name of M/s. Jiya Lal Sumair Chand Jain dismissed the same.

9. In the *Sudhir Engg. Company Vs. Nitco Roadways*, the Apex Court dealt with the provisions contained under Section 3,65,68 of Evidence Act and Order 13 Rule 4 CPC about the admissibility of the evidence in respect of the documents, which are admitted by the opposite parties during the process of the admission of the documents before the Joint Registrar and which are marked as exhibits. In this regard Justice R.C.Lahoti of this Court (as his Lordships then were) made the following observations: 8. I am firmly of the opinion that mere admission of document in evidence does not amount to its proof. 8.1. Admission in evidence of a party's document may in specified cases exclude the right of opposite party to challenge its admissibility. The most prominent examples are when secondary evidence of a document within the meaning of Ss. 63- 65 of the Evidence Act is adduced without laying foundation for its admissibility or where a document not properly stamped is admitted in evidence attracting applicability of Section 30 of Stamp Act. 8.2. But the right of a party disputing the document to argue that the document was not proved will not be taken away merely because it had not objected to the admissibility of the document. The most instructive example is of a Will. It is a document required by law to be attested and its execution has to be proved in the manner contemplated by S. 68 of Evidence Act read with S.63 of the Succession Act. The party challenging the Will shall not be excluded from demonstrating at the final hearing that the execution of the Will though exhibited, was not proved as statutorily required. 9. The law laid down by the Supreme Court in *Sait Taraji vs. Yelamarti Satyam* (AIR 1971 SC 1865) is:- The mere marking of exhibit does not dispense with the proof of documents.

10. Two D B. of Lahore, *Ferozchin vs. Navab Khan*, AIR 1928, Lahore 432 and *Hari Singh vs. Firm Karam Chand* AIR 1927, Lahore 115, have clearly held that the admission of documents under Order 13 Rule 4 CPC does not bind the parties and unproved documents cannot be regarded as proved nor do they become evidence in the case without formal proof.

11. I have looked into the provisions of Delhi High Court (O.S.) Rules 1967 also. Chapter XIII Rule 3 provided for documents admitted in evidence being numbered in such manner as the Court may direct. 11.1. There is an O.S. Practice Direction (No. 3 of 1974), which vide paras 6 and 7 provides:- 6. The Court Master of the Court shall take charge of every document or object put in as an exhibit during the trial of any case and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in or the witness by whom it is proved, and with a number, so that all exhibits put in by a party, or proved by a witness, are numbered in one consecutive series. 7. The Court Master of the Court shall examine all documents produced or offered in evidence and bring any apparent insufficiency of the Court fee or other stamps to the notice of the Judge for orders. He shall endorse all documents admitted in evidence and all documents rejected with the particulars required by law and sign or initial such endorsement. 11.2. A bare reading of this Practice Direction shows that it is not artistically drafted. Proved as used in para 6 is nothing else except used loosely for put in produced or tendered. After all the question of proof is not answered by Court during the statement of witnesses simultaneously with production of documents nor does the Court Master decide upon proof of documents. Para 7 makes it clear that endorsement by the Court Master of exhibit number on a document is admission in evidence and not proof of a document. 10. In the present case, firstly there is no mention of any authorization in the statement of CW3, the appellant nor any other evidence has been made produced by the appellant despite suggestions given to him by the respondents that the complainant firm has not authorized the appellant to institute present proceedings as well as a suggestion the letter of authorization exhibits CW1/1 was not executed by any partner of the complainant firm. It is a matter on record that no partner of the firm M/s. Jiya Lal Sumair Chand Jain has appeared in the witness box. In fact the document exhibit CW1/1 has not even been mentioned by the appellant in his statement. 11. In the case of *M/s. Gopala Krishna Trading Company Vs. D. Bhaskaran*, the Madras High Court has only dealt with the provision of Section 141 and 142 of the Negotiable Instruments Act which empowers the manager also to file a complaint on behalf of a firm. The relevant discussion has been made in paragraph 11 and 12 but in the present case, as stated above there is no material available to prove the authorization. 11. In the instant case the complaint having been given by

M/s. Gopalakrishna Trading Company represented by its Manager it cannot be stated that the complaint had been preferred by any other person other than the company, which is the payee and which is entitled to prosecute the drawer of the cheque for committing the alleged refraction or violation of the provisions of Sec. 138 of the Act.

12. In view of this, the return made by the Court below is not really reflecting the provisions enumerated under the Act as stated above and therefore it is that the Court below is directed to take the complaint on file and dispose of the same according to law. 12. At this juncture it will also be appropriate to take note of the provisions contained under Section 142 of the Negotiable Instruments Act which reads as under: 142. Cognizance of offences. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)- (a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque; (b) such complaint is made within one month of the date on which the cause-of-action arises under clause (c) of the proviso to section 138: (provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.) (c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

13. In view of the aforesaid, even though a complainant that is the payee of the cheque or the holder in due course can present a complaint even through a Manager or an authorized representative, such complaint has to be on behalf of the payee or the holder in due course and cannot be filed in the personal capacity either by the Manager or by the authorized representative without filing the said complaint for and on behalf of the payee or the holder in due course.

14. In the light of the aforesaid legal position the appellant not being a payee in respect of two cheques which were dishonoured on presentation and the firm having not come forward either to file the complaint and the authority of the manager having not proved for filing of such complaint which again was not filed in the name of the firm, the order passed by the Learned M.M. dt. 16.03.2006 is fully justified.

15. Accordingly, criminal appeal filed by the appellant being without any merits is dismissed. Tiral court record be sent back.

Sd./-
MOOL CHAND GARG, J.

JANUARY 23, 2009