

(2008) 05 P&H CK 0181

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Miscellaneous No. 19588-M of 2005

M/s. Atma Tube Products Ltd.

APPELLANT

Vs

The Tata Steel Ltd.

RESPONDENT

Date of Decision: May 21, 2008**Acts Referred:**

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

Citation: (2008) 26 CriminalCC 495**Hon'ble Judges:** Rajesh Bindal, J**Bench:** Single Bench**Advocate:** V.K. Sachdeva, for the Appellant; Jagdish Marwaha, for the Respondent**Final Decision:** Dismissed

Judgement

Rajesh Bindal, J.

This order will dispose of a bunch of 13 petitions bearing Criminal Misc.Nos. 19585-M, 19588-M, 19591-M, 19594-M, 19597-M, 19600-M, 19603-M, 19606-M, 19609-M, 19624-M, 19627-M, 19630-M and 19633-M of 2005 involving similar questions of law and fact.

2. The facts are being extracted from Criminal Misc.No. 19588-M of 2005.

3. The prayer in the petition is for quashing of complaint No.3 dated 02.01.1998 filed u/s 138 read with Sections 141 and 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act") and the summoning order dated 07.03.1988 (Annexure P2). The complaint was filed for dishonour of cheque No.825461 dated 18.10.1997, for a sum of Rs.8,80,500/- (Annexure P1).

4. Brief facts of the case are that the respondent-company filed the complaint against the petitioners u/s 138 read with Section 141 and 142 of the Act. Initially, it was filed against four accused, however, except the present petitioners, the impugned complaint qua other two accused was quashed by this Court, since they

were not found guilty.

5. The petitioner No. 1 accused (for short the Company) is engaged in the business of manufacturing E.R.W. precision Steel Tubes and C.R.C.A. strips. The petitioner company had been purchasing raw materials from the respondent-complainant company on terms and conditions entered into between the parties. The business was going on since 1985-86. In fact the entire payment was being made by way of local cheques, bank guarantee and post-dated cheques. However, the cheque facility granted to the petitioner-accused Company was withdrawn on account of dishonour of two cheques on 30.05.1997. The complaint in the present case was filed on account of dishonour of one cheque amounting to Rs.8,80,500/-.

6. Learned counsel for the petitioners submitted that the present complaint filed by the respondent and all proceedings subsequent thereto are liable to be quashed on various grounds raised by him. The submission is that after dishonour of two cheques on May 30, 1997, the petitioner company immediately made payment to the respondent-company of the dishonoured cheques and requested for restoration of the cheque facility. The respondent-company did not agree to that and even the cheques which were lying with it, were returned. Some of the cheques, which were given in advance to the respondent-company, were not returned inspite of request by the petitioner-company. Further reference has been made to a Civil Suit filed by the respondent-company on 10.02.1999 claiming a sum of Rs.3,41,14,853.92 including interest amounting to Rs.77,91,958.93 whereas the cheques for dishonour of which bunch of complaints have been filed are of amount more than that i.e. Rs.3,83,90,000/-. Meaning thereby that the amount as is forming part of various complaints was not due from the petitioners as on that date.

7. He further submitted that the dispute in the present case is of civil nature and present proceedings could not be initiated especially when the respondent-company had already filed a civil suit for recovery of the amount and in fact that suit was also dismissed by the Court below. The cheques in question which were presented were not given against any specific bills rather the same were retained by the respondent-company and were used to secure payment of the alleged dues and in that eventuality complaint u/s 138 of the Act was not maintainable. Still further, the submission is that the petitioner No.2 would not be liable as it has not been stated that he was the person responsible for and in-charge of the affairs of the petitioner-company.

8. Additional argument raised by learned counsel for the petitioners in Criminal Misc.Nos.19585-M, 19588-M, 19591-M, 19594-M, 19597-M of 2005 is that the complaints filed in this bunch of five cases are liable to be quashed for the simple reason that the same are barred by time. In fact after the presentation of the cheque on the first occasion when the same was dishonoured, the petitioner-company was issued notice and on the failure of the petitioner to satisfy the terms of the notice, the complaint Could be filed on or before December 23,

1997. The same having been filed on 01.01.1998 was barred by limitation.

9. Learned counsel for the petitioners has placed reliance upon the judgments in the cases of M/s.Prem Chand Vijay Kumar v. Yash Pal Singh and another, 2005(2) C C C 546 (S.C.) : 2005(2) C C C 742 (S.C.) : 2005(2) A C J 679 (S.C.) : JT 2005(5) SC 318; Sadanandan Bhadrans v. Madhavan Sunil Kumar, 1998(3) C C C 202 (S.C.) : 1998(2) A C J 267 (S.C.) : JT 1998(6) SC 48; M/s.SIL Import, USA v. M/s.Exim Aides Silk Exports, Bangalore, 1999(2) C C C 295 (S.C.): 1999(1) A C J 493 (S.C.) : JT 1999(3) SC 325; Balwant Singh and another etc. v. Daulat Singh (dead) by Lrs. and others, 1997 (Suppl.) C C C 262 (S.C.) : 1997(2) A C J 201 (S.C.) : JT 1997(5) SC 703; Hira Tikoo v. Union Territory, Chandigarh and others, JT 2004(5) SC 231 [Jai Narain Parasrampuriah \(Dead\) and Others Vs. Pushpa Devi Saraf and Others, Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others](#), ; Shekhar Suman v. Narender and others, 2007(1) Civil Court Cases 685 (P&H) : 2007(1) Criminal Court Cases 769 (P&H) : 2007(1) RCR(Criminal) 366 (P&H); Ajit Sharma and others v. Meenu Singh Dhindsa, 2006(2) RCR(Criminal) 652 (P&H); Dr.Surat Chander Oberoi v. Darshan Singh Soklii, 2003(3) Civil Court Cases 124 (P&H); M/s.Exports India and another v. State and another, 2007(3) Civil Court Cases 198 (Delhi) : 2007(3) Criminal Court Cases 252 (Delhi) : 2007(4) RCR(Criminal) 300 (Delhi); M/s.Sathavahana Ispat Ltd. v. Umesh Sharma, 2007(2) Criminal Court Cases 333 (Karnataka) : 2007(1) RCR(Criminal) 843 (Karnataka); Inder Mohan Goswami and another v. State of Uttaranchal and others, 2007(4) Criminal Court Cases 886 (S.C.) : JT 2007(11) SC 499; Aroon Purie and others v. State of Haryana and another, 2007(4) RCR(Criminal) 6 (P&H); Saroj Kumar Poddar v. State (NCT of Delhi) and another, 2007(1) Civil Court Cases 597 (S.C.): 2007(1) Criminal Court Cases 842 (S.C.) : 2007(1) Apex Court Judgments 243 (S.C.) : 2007(1) RAJ 205 (SC) and Shanku Concretes Pvt. Ltd. and others v. State of Gujarat and another, 2000(3) Criminal Court Cases 126 (Gujarat).

10. Learned counsel for the respondent raised a preliminary objection regarding a maintainability of the present petitions, considering the conduct of the petitioners. The submission is that, this Court should not exercise extraordinary jurisdiction u/s 482 of the Code of Criminal Procedure merely on the ground of delay and laches. The complaints were filed in the year 1998. The service of the petitioners was effected on 24.05.2000. Still the present petition was filed in the year 2005, when the presence of the petitioners had to be secured by issuance of warrants. In fact this Court was approached by the petitioners with a view to delay the proceedings, once in the evidence led by the respondent the petitioners were cornered.

11. In response to the contentions raised by the learned counsel for the petitioners, regarding the issue of limitation in bunch of five petitions mentioned above, learned counsel for the respondent submitted that in fact the respondent had not got any notice issued or served to the petitioners as alleged. The respondent was within its right to present the cheque again for collection of payment to the bankers of the petitioner company and accordingly, the cheque was presented on 06.11.1997,

which was dishonoured again and returned back on 07.11,1997. It was only then notice was served upon the petitioner-company within the period of limitation and the complaint was also filed. Further it is submitted that in case no notice is issued on dishonour of cheque on the first occasion, the cause of action will arise to file complaint when the cheque is dishonoured on the second presentation. Hence, the same is not beyond limitation.

12. As regards, the issuance of cheques or account of supply of material and against the particular bills, learned counsel for the respondent has referred to invoice on record which shows that against particular bill the cheque number is mentioned for the payment thereof.

13. As regards the civil suit, the submission is that the present proceedings are not substitute for the civil proceedings. The civil suit was filed after the filing of the complaints within the period of limitation as the respondent is to recover money from the petitioners and was not to prosecute only for the offence committed by them.

14. As far as the difference in amount is concerned, learned counsel for the respondent submitted that this is a matter of evidence and mere statement of the petitioners cannot be accepted and the complaint cannot be quashed on that basis as the same may result in miscarriage of justice. In case the respondent is not able to prove its case the petitioners will be acquitted. Once the petitioner-company itself is clubbing the issues and raising them together in all the complaints, even if one of the complaints is quashed the same will be of no use as the trial court will consider all the issues after conclusion of the evidence.

15. Learned counsel for the respondents has placed reliance upon the judgments in the cases of S.M.S.Pharmaceuticals Ltd. v. Neeta Bhalla and another, 2005(2) Apex Court Judgments 544 (S.C.) : 2005(3) Civil Court Cases 483 (S.C.) : 2005(4) Criminal Court Cases 502 (S.C.); S.V.Muzumdar and others v. Gujarat State Fertilizer Co. Ltd. And another, 2005(1) Apex Court Judgments 604 (S.C.): 2005(2) Civil Court Cases 335 (S.C.): 2005(2) Criminal Court Cases 720 (S.C.) : 2005(2) RCR (Criminal) 860 and Daljeet Singh Chandok v. State and another, 2006(2) Civil Court Cases 199 (Delhi) : 2006(2) Criminal Court Cases 308 (Delhi) : 2006(1) RCR (Criminal) 958 (Delhi).

16. After hearing learned counsel for the parties and perusing the paper book, I do not find any merit in the contentions raised by the learned counsel for the petitioners. None of the arguments raised by him is worth which would enable this Court to quash the complaints filed against the petitioners.

17. Primarily, for the dispute on account of the fact that the respondent had in fact used certain blank cheques lying with them, the respondent has referred to invoice which specifically mentions the cheque numbers for payment against the delivery order and the invoice, which are subject matter of the complaint. Reference was made to delivery order No.00551 attached with the reply at page No. 125 of the

paper look, mentioning cheque No.825461 dated 08.10.1997 delivery/invoice, placed on record at page 121 to 124 refers to delivery order No.00551 dated 18.09.1997.

18. As regards the pendency of civil litigation. I do not find this also to be a good ground to quash the proceedings for the simple reason that the proceedings u/s 138 of the Act are not in the nature of recovery proceedings. The object for introduction of Section 138 of the Act was to inspire confidence in the banking transaction. Still further it is only that punishment is provided for committing offence u/s 138 of the Act. As such for recovery of money due the creditor necessarily has to file a civil suit and in the present case there is nothing wrong in case the respondent had subsequently filed a civil suit for recovery of the amount due. On that ground proceedings u/s 138 of the Act cannot be quashed.

19. The judgments relied upon by learned counsel for the petitioners on the issue regarding the proceedings in the present case being of civil nature except one in Shanku Concretes Private Limited's case (supra) where Gujarat High Court has dealt with an issue u/s 138 of the Act. In all other judgments, the issue was regarding quashing of FIRs/complaints filed under various sections of Indian Penal Code and not u/s 138 of the Act. Even in Shanku Concretes Private Limited case (supra), the facts were quite different as the cheque therein was offered as a security. Whereas in the present case as has already been found, the cheque was issued by the petitioner alongwith the delivery order and not as security.

20. From the facts on record, in my opinion, the delay in filing the present petition before this Court for quashing the complaints is also fatal. In case the Court finds that the cognizance of an offence has been taken without jurisdiction, the power can certainly be exercised at any stage. But in the present case facts are otherwise. The complaints were filed in the year 1998 and the petitioners were summoned and served. On 16.10.1999 the accused put in appearance through counsel. Some of the evidence has been recorded, before the petitioners approached this court for quashing. It is not in dispute that two of the four accused impleaded by the respondent in the complaints had earlier approached this Court and qua them the complaints were quashed. Nothing prevented the petitioners to approach this Court in the very beginning to make this prayer. Once the evidence has already been recorded in the complaint, I do not find it to be a fit case for quashing the complaint at this stage.

21. Even the judgments relied upon by the learned counsel for the petitioners on the issue of delay in filing the petition before this Court for quashing also have no relevance as each case has to be examined on its own merits. A Bench of Delhi High Court in Daljeet Singh Chandok's case (supra) while relying upon the judgment of Hon'ble the Supreme Court in M/s.Zandu Pharmaceutical Works Ltd. 's case (supra) rejecting the prayer for quashing, on the ground of delay opined as under:-

Recently, the Supreme Court of India after examining the entire case law u/s 482 Code of Criminal Procedure in the judgment titled [Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others](#), has inter alia opined as under:

".....The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more, so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material....."

After examining the amendments in the Negotiable Instruments Act, according to which summary trial procedure is to be followed (Sections 138,143, Negotiable instruments Act and Sections 254,260 to 264 Code of Criminal Procedure) relying upon the established law regarding the dishonour of cheques (supra) and powers of the High Court under 482 Code of Criminal Procedure (supra), I am of the view that it will be better for the petitioners to defend themselves in the trial court and if they are so sure of their defence, then they should get themselves discharged or acquitted at the earliest, rather than rushing to the High Court against every order and praying for examining the entire evidence without it being on record of the trial court, without it having been tested by cross-examination.

22. As far as the issue raised in the bunch of five petitions regarding the complaints being time barred is concerned, though the petitioners have raised the argument that the respondent had issued a notice to them on the first occasion when the cheque was dishonoured and the same was also received by them, but for this purpose, only reliance is on one line written in the notice vaguely stating this fact. No notice as such received by the petitioners as alleged has been placed on record. If the petitioner-company was raising an argument in this regard, it was incumbent on it to have taken the same to the logical end by referring to material to clinch the issue. Merely on the oral submissions, the complaint cannot be quashed. Nothing prevented the petitioners to place on record the notice which they had allegedly received on the first occasion of dishonour of cheque. In view of these facts I do not find it to be a good ground to quash the complaints.

23. As far as the allegation regarding petitioner No.2 being not the person responsible for the affairs of the company is concerned, suffice to add that he is the signatory of the cheques and Director of the Company. Being so he cannot be absolved of his liability.

24. Reference can be made to the judgment of Hon"ble the Supreme Court in SMS Pharmaceuticals Ltd's case (supra) where in Para 21 thereof while answering following question:

Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the Managing Directors or Joint

Managing Director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against?

Hon"ble the Supreme Court opined as under:

The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable u/s 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered u/s 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141.

25. Hon"ble the Supreme Court in [Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others](#), while discussing the exercise of power u/s 482 Cr.P.C. observed as under:

As noted above, the powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High. Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.

26. In view of my above discussions, it is found that the effort of the petitioners is to get the evidence appreciated which has either been led before the Court below or is yet to be led and come to a conclusion after recording a finding of fact that no offence is made out. The appreciation of evidence does not fall within the domain of proceedings u/s 482 Cr.P.C. for quashing of complaint. The evidence which is led or which is yet to be led before the trial court is to be appreciated by it on conclusion of the trial.

27. Accordingly, for the reasons mentioned above, I do not find these to be fit cases where the complaints filed against the petitioners deserve to be quashed in exercise of extraordinary jurisdiction by this Court.

28. Accordingly, the petitions are dismissed.

29. The parties through their counsels are directed to appear before the trial court on June 13, 2008 for further proceedings.