LG Electronics India Pvt. Ltd. and Another Vs State of Rajasthan and Others

Criminal Miscellaneous Petition No. 306 of 2007

Court: Rajasthan High Court

Date of Decision: Oct. 19, 2011

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 156(3), 482#Negotiable Instruments Act, 1881 (NI) â€" Section 118, 138#Penal Code, 1860 (IPC) â€" Section 120B, 403, 406, 407, 409

Citation: (2012) 2 BC 564 : (2012) 2 RLW 1663

Hon'ble Judges: Sandeep Mehta, J

Bench: Single Bench

Advocate: A.K. Sharma, assisted with Mr. Rachit Sharma, for the Appellant; Paresh Choudhary, Public Prosecutor and Mr. V.S. Yadav, Advocate For the Respondent No. 3, for the Respondent

Final Decision: Allowed

Judgement

Sandeep Mehta, J.

Heard learned Counsel for the parties.

1. This misc. petition has been filed on behalf of the petitioners M/s. LG Electronics and its Area Manager Mr. Arvind Sharma seeking quashing of

the F.I.R. No. 47/2007 registered against them at the Police Station Kotwali, District Bharatpur for offence under Sections 403,406,407,409,

420, 467,468,471 and 506 read with 120B, PC. The facts necessary for disposal of the present petition are that the petitioner company had

entered into a dealership agreement with the respondent No. 3 firm named M/s. T.M. Electronics of Bharatpur. It is alleged that the respondent

firm in furtherance of the dealership contract, gave a blank cheque towards security to the petitioner company on 19.2.2003 being Cheque No.

586202 drawn on Punjab & Sindh Bank, Bharatpur. It is further the case of the complainant that since there were some changes in the constitution

of the respondent firm, as such the Bank account from which the aforementioned cheque was given, was closed and the petitioner company was

requested by written intimation not to use the said cheque and to return back the said cheque. In the mean time, the complainant alleges that some

disputes started arising between the company and the complainant firm and ultimately, the company started giving threats to the complainant that

the dealership of the complainant firm would be terminated. The complainant firm instituted a suit for injunction against the company in the Court of

Civil Judge, Bharatpur, despite that, another firm by the name of M/s. National Electronics was appointed as a dealer for the company at

Bharatpur and ultimately, the complainant had to file a contempt petition against the company. The complainant further alleges that he came to

know that the company and its directors conspired to make fraudulent endorsements in the blank cheque given by the firm and projecting the

cheque to be issued on 6.11.2006, the cheque was presented. In the Bank despite the fact that the account had been closed and despite the fact

that the cheque which was being held in trust had to be returned back to the complainant by the company and as such, the complainant alleged that

the company by misusing the cheque in question by filling in the amount and date, has committed the offences of forgery and cheating. Setting out

the above allegations, the respondent No. 2 Ranjeet Singh claiming himself to be an authorised person of the firm filed a complaint in the Court of

C.J.M., Bharatpur on 4.1.2007 from where the same was forwarded to the Police Station Kotwali, Bharatpur for investigation u/s 156(3),

Cr.P.C. where the F.I.R. No. 47/2007 has been registered and investigation commenced.

3. The company-L.G. Electronics and its area manager, the petitioners herein, have approached this Court by way of this misc. petition seeking

quashing of the F.I.R. impugned. Praying for quashing of the impugned F.I.R., Mr. A.K. Sharma, learned Senior Advocate appearing on behalf of

the petitioners, has submitted that the F.I.R. has been lodged merely to harass, humiliate and victimise the company and its directors/officers for

ulterior motives. It has been submitted that an ex facie reading of the complaint does not disclose any offence whatsoever. It has further been

submitted that civil litigation was filed by Ranjeet Singh in a mala fide manner against the company. It has also been argued that admittedly the

cheque was given against security and since the complainant firm did not adhere to the conditions of dealership, the company was forced to take

action of invocation of the security against the firm and it is in the process of that action that the cheque was put into the Bank account of the

company for encashment for recovering the outstanding dues of the company. It has also been submitted that the company was very much entitled

to fill in the cheque of security and present the same for encashment. It has also been submitted that the mala fides of the complainant are writ large on the face of the record because as per the complainant, he claims to have asked for the security cheque in issue to be returned but did not

replace the same with another cheque of security. In absence of a replacement cheque being given, the company was very much entitled to retain

the original cheque and present the same for encashment. It is submitted that the company was not obliged to return the cheque simply on the

asking of the complainant unless a replacement cheque was given.

3. It has also been submitted that the complaint has been filed mala fide because the company had already initiated prosecution against the

complainant for offence u/s 138 of the Negotiable Instruments Act and it is as a counter blast that the present prosecution has been launched in

order to pressurize the company into withdrawing the complaint filed by the company under the Negotiable Instruments Act for the bouncing of the

very cheque which is the subject matter of the present F.I.R.

4. It has also been submitted that the complainant is ex facie not entitled to continue the prosecution for another reason as well. It has been

submitted that the concept of vicarious liability of the directors of the company is foreign to a prosecution for offences under the Indian Penal

Code. Placing reliance on the decision of the Hon''ble Apex Court in the case of Hira Lal Hari Lal Bhagwati v. CBI, New Delhi, III (2003) SLT

511=104 (2003) DLT 699(SC)=(2003) 5 SCC 57, it has been submitted that the directors/employees of the company cannot be held vicariously

liable for the offences under the Penal Code allegedly committed by the company. It has been submitted that the complainant has not come out

with any allegation as to how the area manager of the company was responsible for the affairs of the company so as to make him liable for the

offences set out in the complaint. It has also been submitted that there is no averment. In the complaint or the F.I.R. that as to who had made the

co-called false endorsements in the cheques before presenting the same for encashment and as such, the prosecution which has been launched in

this case is without any basis.

5. Reliance in support of the contentions advanced on behalf of the petitioners has been made on the decisions of the Hon''ble Apex Court referred

to below :

(1) Sunil Kumar v. Escorts Yamaha Motors Ltd. & Ors., IX (1999) SLT 97=IV (1999) CCR 223 (SC)=(1999) 8 SCC 468.(2) Ajay Mitra v.

State of M.P. and Others, I(2003) SLT 672=(2003) 3 SCC 11.(3) Maksud Saiyed v. State of Gujarat and Others, IX (2007) SLT 172=IV

(2007) DLT (Crl.) 617 (SC)=IV (2007) CCR 303 (SC)=IV (2007) BC 568 (SC)=(2008) 5 SCC 668.

6. Per contra, learned Counsel for the complainant has submitted that it is the admitted case from the record that the company had been intimated

that the account from which the cheque in question was issued, had been closed much before its presentation. It has further been submitted that the cheque in question has been issued in 2003 and even after coming to know that the account has been closed, the cheque was presented in the

Bank and on its bouncing, a mala fide complaint has been filed against the complainant firm thereby causing undue harassment to the complainant

firm. It has also been submitted that the act of the accused in filling the cheque and presenting the same in the Bank, amounted to cheating and

forgery because of the fact that intimation has already been given to the company for not presenting the cheque in the Bank.

7. It has also been submitted that when the dealers are required to deposit cheques for securing credit supply, bouncing of such a cheque would

not attract the provisions under Negotiable Instruments Act. Reliance has been placed on the following judgments :

(1) Shri Taker N. Khambati v. Vinayak Enterprises, Secunderabad and Others, 1995 Cri.L.J. 560.

(2) M/s. Shreyas Agro Services Pvt. Ltd. v. Chandrakumar S.B., II (2007) BC 357=2006 Cri.L.J. 3140.

8. I have considered the arguments advanced at the Bar and perused the Impugned F.I.R. as well as the record.

9. This Court is of the view that by virtue of Section 118 of the Negotiable Instruments Act, there exists a presumption in favour of the holder of

the cheque that the cheque bears the endorsements with which the same has been presented to the Bank. A holder of the cheque in due course

even if the cheque is blank in dates or other endorsements, is entitled to fill in the same and present the same to his Bank for encashment. This

Court in the case of Sunil Kumar v. State of Rajasthan, 2002(1) RCD 377 had the occasion to consider the issue of material alteration and the

Court held that the holder of the cheque is very much entitled to fill in the blanks left in the cheque and it could not be said that by mere act of filling

in the details or endorsements that the holder had made material alterations in the cheque.

10. Thus, none of the acts as alleged in the complaint can be said to be either the acts of cheating or forgery. Undisputedly, the cheque bears the

signature of the partner of the firm. The cheque has undisputedly been given to the company as security and after the disputes arose regarding

payments, the company sought to recover its dues from the complainant firm by utilising this cheque, it is only after the initiation of prosecution of

the complainant firm by the company u/s 138 of the Negotiable Instruments Act that the present F.I.R. has been filed. The Hon''ble Apex Court in

the cases of, (1) Sunil Kumar v. Escorts Yamaha Motors Ltd. and Others (supra) and (2) Mahindra & Mahindra Finance Services Ltd. v. Rajeev

Dube, AIR 2008 (Suppl.) SC 821 has held that initiation of prosecution for cheating and forgery (in relation to a cheque) after the bouncing of the

cheque and after the initiation of prosecution under Negotiable Instruments Act, is nothing but an attempt to pre-empt the complaint u/s 138of the

Negotiable Instruments Act. Such an F.I.R. has been held to an F.I.R. instituted as a counter blast and has been held liable to be quashed.

11. As regards liability of the directors, this Court need not dwell much on the issue because the legal position in this regard is no longer res integra.

The Hon''ble Apex Court in the cases of Hira Lal Hari Lal Bhagwati and Maksud Saiyed (supra) has held that there is no such provision in the

Indian Penal Code by which the directors/employees of am incorporated company can be held liable vicariously for the charges levelled against the

company. There is no allegation in the F.I.R. regarding the personal liability of any of the directors/employees of the company.

12. That apart, as has been already observed above, the offences which have been made subject matter of F.I.R. are for breach of trust,

defalcation, cheating and forgery. Suffice it to say that all the aforesaid offences are ex facie not disclosed from the admitted allegations of the

complaint. Undisputedly, the cheque in question was given voluntarily by the complainant firm as a security to the company and in the event of any

liability of the firm arising towards the company, the company was very much entitled to present the cheque for encashment. The said action has

been taken and thereafter, the cheque was bounced as the account was closed. Therefore, there can be no question of any breach of trust being

committed by the company or its directors in relation to the security cheque. The cheque was given to the company towards security and the same

was sought to be encashed by the company in exercise of its rights to recover its dues. This action of the company cannot be said to be an offence

of criminal misappropriation punishable u/s 406, I.P.C. by any stretch of imagination.

13. So far as offence u/s 420, I.P.C. is concerned, for application of the aforesaid offence, it has to be shown that the intention of the offender was

to cheat the complainant at the initiation of the dealings. As has already been stated above, it is the admitted case of the complainant that the

complainant firm has given the cheque voluntarily to the accused company towards security in pursuance to the grant of dealership. Thereafter, the

petitioner company granted the dealership to the complainant and the same continued for a period of three years. Therefore, the very basic element

of cheating i.e. existence of mens rea at the initial stage could not have been in existence even as per the admitted allegations of the complainant.

14. As regards the allegations of forgery, as has been observed above, that the act of the company in filling up of the blank signed cheque and

thereafter presenting the same to the Bank cannot be said to be an act of forgery because the holder of the blank signed cheque in due course is

entitled to fill in the cheque and present the same in the Bank. The judgments on which the learned Counsel for the complainant has placed reliance

do not have any bearing on the present case as they relate to the culpability of a firm in relation to a security cheque. They may be useful to the

complainant in defending his case in the complaint u/s 138 of the Negotiable Instruments Act but are not at all germane to the issues involved in the

instant petition seeking quashing of the F.I.R. Thus, in the opinion of this Court, the offences of cheating, breach of trust, misappropriation and

forgery are not made out from the allegations made in the complaint.

15. It is thus clear that the F.I.R. impugned has been filed for oblique motives and ex facie does not disclose any offence whatsoever. The F.I.R.

impugned has also been filed mala fide and as a counter blast to the action of the company in-presenting the cheque of the complainant firm in its

account and thereafter filing a complaint against the firm under the provisions of the Negotiable Instruments Act. As such, the impugned F.I.R.

cannot but be said to be an act intended to preempt or to counter blast the complaint filed by the petitioner company against the complainant firm.

The upshot of the above discussion is that the F.I.R. impugned deserves to be quashed by this Court in exercise of its inherent powers u/s 482,

Cr.P.C. Resultantly, the misc. petition is allowed and the impugned F.I.R. No. 47/ 2007 of P.S. Kotwali, District Bharatpur is hereby quashed.

Petition allowed.