

**(2007) 09 AHC CK 0196**

**Allahabad High Court**

**Case No:** None

Roshan Lal Gupta, Shishir Anand  
Gupta and Smt. Archana Gupta

APPELLANT

Vs

State of U.P. and Sri Om Prakash  
Agarwal

RESPONDENT

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**Date of Decision:** Sept. 19, 2007

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 200, 202, 482
- Negotiable Instruments Act, 1881 (NI) - Section 138
- Penal Code, 1860 (IPC) - Section 420

**Citation:** (2009) 2 CivCC 512 : (2009) 1 RCR(Civil) 127 : (2009) 1 RCR(Criminal) 140

**Hon'ble Judges:** R.K. Rastogi, J

**Bench:** Single Bench

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**Judgement**

R.K. Rastogi, J.

This is an application u/s 482 Cr.P.C. to quash the proceedings of criminal complaint case No. 4745 of 2004 Om Prakash v. Roshan Lal and Ors., u/s 138, Negotiable Instruments Act police station Shakti Nagar district Sonbhadra pending in the court of the Judicial Magistrate/Civil Judge (Junior Division), Duddhi, district Sonbhadra.

2. The facts relevant for disposal of this application are that the complainant O.P. No. 2 filed a complaint case against the accused applicants u/s 420 I.P.C. and Section 138, Negotiable Instruments Act, with these allegations that the complainant was supplier of Gitti and had supplied Gitti worth Rs. 4.87,483/- to M/S Technow Consultants and Engineers Pvt. Ltd. Renukoot, Sonbhadra, which is a company run by the accused persons. Authorised signatories of the company issued a cheque of the above amount in favour of the complainant on 30.4.2004 and the cheque was for the last time presented in bank on 3.9.2004 but the Bank dishonoured the cheque for insufficient funds on 6.9.2004. Then the complainant gave a notice to the

accused persons on 14.9.2004. The accused refused to take notice and did not make payment of the amount. The accused had dishonest intention from the very beginning to take supply of Gitti and not to make payment. The complainant tried to lodge a report at the police station on 4.10.2004 but the report was not written and then he filed this complaint on 11.10.2004.

3. On the above complaint the learned Magistrate recorded the statement of the complainant u/s 200 Cr.P.C. and of his witness Santosh Kumar u/s 202 Cr.P.C. Then he summoned the accused persons u/s 138, Negotiable Instruments Act vide his order dated 19.10.2004. Aggrieved with that order the accused filed this application u/s 482 Cr.P.C. in this Court.

4. It has been alleged in the affidavit filed in support of the application u/s 482 Cr.P.C. that the applicants were not incharge of the business of the aforesaid company and were not responsible for making payment. It has also been alleged that the applicant No. 1 Roshan Lal Gupta is Chairman of the company and applicants No. 2 and 3 are directors and they have nothing to do with the payments. Hence, they are not liable to be made accused in the case. It has also been pleaded that it has nowhere been asserted in the complaint that these persons were liable to make payment and that they were incharge of the business, and so they could not be impleaded as accused.

5. A counter affidavit has been filed from the side of the complainant O.P. No. 2 with which he has annexed a copy of the resolution passed in the meeting of the Board of Directors of the company Technow Consultants Engineers Pvt. Ltd., (Annexure C.A.I to the counter affidavit) whereby the Board of Directors authorised Mrs. Archana Gupta applicant No. 3, Mr. Shishir Anand Gupta, Mr. Nilesh Saxena or Mr. Hemant Rai to issue cheques for payment. The Director Shishir Anand Gupta applicant No. 2 and the above named authorised signatories were also authorised to open account in the Bank. They were also authorised to honour cheques, bills of exchange and promissory notes drawn on behalf of the company.

6. A rejoinder affidavit has also been filed by the applicants in reply to the counter affidavit of the complainant. With this rejoinder affidavit an amendment in the aforesaid resolution, which was filed as Annexure No. C.A. 1 to the counter affidavit, has been filed, in which it has been provided that account of the company shall be operated jointly by the compulsory signatories, Smt. Archana Gupta and Mr. Shishir Anand Gupta with one of the above signatories, Mr. Nilesh Saxena, Mr. V.K. Gupta and Mr. Hemant Rai.

7. The learned Counsel for the applicants vehemently argued before me that this fact has not been asserted in the complaint that the accused were incharge of the business of the company and are liable to make payment and so the complaint against them was not maintainable. He cited before me rulings in the cases [Monaben Ketanbhai Shah and Another Vs. State of Gujarat and Others](#), , [S.M.S.](#)

[Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, Sabitha Ramamurthy and Another Vs. R.B.S. Channabasavaradhya,](#) and Saroj Kumar Poclard v. State (N.C.T of Delhi.) and Anr. 2007 (57) ACC 1090.

8. On the other hand, learned Counsel for the complainant O.P. No. 2 cited before me the rulings in Everest Advertising Pvt. Ltd. v. Stale Govt. of N.C.T. Of Delhi and Ors. 2007 (58) ACC 540, C.C. Aloviliaji v. Palapetty Muhammed and Anr. (58) 2007 ACC 840. He submitted that in this case copies of resolutions of the company have been filed to show that the accused applicants No. 2 and 3, who are directors of the company, were liable to make payment and this fact is sufficiently clear from Annexure C.A.I to the counter affidavit as well as Annexure No. R.A. I to the rejoinder affidavit and as such the applicants No. 2 and 3 cannot save their skin from the liability to make payment and they have been rightly impleaded as accused persons in this case. However, so far as accused No. 1 is concerned, it was stated regarding him that he is the Chairman of the company and nothing else has been stated either in the complaint or in the counter affidavit filed by the complainant as to how he was incharge of the business of the company and responsible for making payment.

9. The position in this way is that taking into consideration the documents filed by the parties and the rulings cited above, I am of the view that prima facie no case is made out against the accused No. 1, who is Chairman of the company and so the proceedings of the case deserve to be quashed against him, but so far as accused applicants No. 2 and 3 are concerned, they are directors of the company and taking into consideration the resolution,; filed as Annexures C.A.I lo the counter affidavit and R.A.I to the rejoinder affidavit, I do not find any sufficient ground to quash the proceedings of the Complaint Case No. 4745 of 2004 against them.

10. The application u/s 482 Cr.P.C. is, therefore. partly allowed for accused applicant No. 1 Roshan Lal Gupta and it is dismissed for applicants No. 2 and 3, i.e. Shishir Anand Gupta and Smt. Archana Gupta respectively., with the result that die proceedings of Complaint Case No. 4745 of 2004, Om Prakash v. Roshan Lal and Ors., pending in the court of Civil Judge (Junior Division)/Judicial Magistrate 1st Class, Duddhi, Sonebhadra are quashed in respect of accused applicant No. 1 Roshan Lal Gupta, but the case shall proceed against accused applicants No. 2 and 3.

11. Orders accordingly.