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(2016) 03 MP CK 0015

MADHYA PRADESH HIGH COURT (INDORE BENCH)

Case No: Criminal Revision Nos.1163 of 2012 & 1191 of 2012

Dhanpal Dosi	APPELLANT
Vs	
State of Madhya Pradesh	RESPONDENT

Date of Decision: March 3, 2016

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138, 141
- Penal Code, 1860 (IPC) - Section 120B, 420

Citation: (2016) 2 JabLJ 391 : (2016) 4 MPLJ 32

Hon'ble Judges: Smt. S.R. Waghmare, J.

Bench: Single Bench

Advocate: Shri Vivek Singh, learned Cousnel, for the Petitioner; Shri Peyush Jain, learned Dy.G.A, for the Respondent No.1/State; Shri Vinay Saraf, learned Counsel, for the Respondent No.2/Complainant

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Smt. S.R. Waghmare, J.—These two revision petitions are dealt together since they are between the same parties since the complainant is the same and the disputed cheques has been issued by the same accused petitioner as part of the business transactions.

2. The petitioner Dhanpal Dosi has filed the present petitions being aggrieved by the order dated 06.08.2012 passed by X A.S.J., Indore in Criminal Revisions Nos. 270/11 and 271/2011, whereby learned trial Court has dismissed the complaint of respondent No.2 Vijay Shah for offence u/S.420, 120-B of the IPC but took cognizance of the offence u/S.138 of N.I. Act.

3. Briefly stated the facts of the case are that complainant Vijay Shah was having business in M.T.H. Compound and working in the name of Lucky Chemical Corporation, and whereas the accused Dhanpal Dosi was the Director of Indo-Thai Commodity Exchange Pvt. Ltd. and was a corporate member of M.C.X. and dealing in commodity and also providing service to customers. There are transactions drawn between the parties and the complainant Vijay Shah has deposited margin money with the accused for the purpose of trading. And the co-accused Prabha Nagar was the Manager of the said commodity exchange who sent the account statements of the complainant Vijay Shah from time to time; that several amounts, were outstanding as dues from the accused petitioner. In this regard accused petitioner gave post dated cheque on 20th May 2009 in favour of the complainant Vijay Shah of Canara Bank, Siyaganj Branch, R.N.T. Marg, Indore and these cheques were signed by co-accused Prabha Nagar. The complainant Vijay Shah had produced cheque No.223602 of Rs. 12,00,000/- on 03.05.2009 and cheque No.223604 of Rs. 9,00,000/- on 18.05.2009 and cheque No.223603 of Rs. 8,00,000/- on 19.05.2009 for encashment in HDFC Bank, New Palasia, Indore. The cheques were returned with an endorsement "stop payment". However, legal notices were issued on 31.08.2009 & 14.09.2009 through lawyers to the accused person, demanding the cheques amount, money was not paid and complaint was lodged for offence u/S.420, 120-B of the IPC before the Magistrate and he dismissed the complaint and the learned JMFC took cognizance u/S.138 of N.I. Act and issued process. The revision was filed by the complainant before the Court of Sessions and learned A.S.J. allowed the revision and setting aside the order of not taking cognizance u/S.420 and 120-B of the IPC. The matter was remanded back and the Revisional Court directed that the lower Court should examine the complaint, statements of witnesses, documents and take cognizance afresh. Being aggrieved by the order passed by the Revisional Court, the present cross petitions have been filed.

4. Counsel for the petitioner has vehemently urged the facts that there was collusion between the complainant Vijay Shah and co-accused Prabha Nagar and that Prabha Nagar was never authorised to sign these cheques. The main ingredients for offence u/S.420, 120-B of the IPC is that there should be dishonest intention right from inception with crime, which is lacking in the present petition. The learned judge of the Revisional Court exceeded the jurisdiction since at the most the trial order could further order inquiry under Section 156 (3) of the Cr.P.C. but cannot frame the charges afresh.

Counsel for the petitioner has vehemently urged the facts and circumstances of the case that offence under Section 420, 120-B of the IPC or even offence u/S.138 of N.I. Act was not maintainable at all and the revisional Court had erred in discharging the accused only for offence u/S.420 and 120-B of the IPC. Counsel submitted that both the orders be set aside and the petitioner be discharged from the aforesaid offences.

5. At this juncture, Counsel placed reliance in the matter of **Rajaram Gupta and others v. Dharamchand and others, 1983 MPLJ 56** whereby the Court had held that bare possibility of an additional offence being made out would not be itself justify further

enquiry, further enquiry ought not to be ordered where it would prove futile. The order of discharge is not to be interfered with unless it is perverse or glaringly unreasonable. Counsel urged on the said basis that Magistrate had already discharged the accused at the previous stage then it would not be proper to the Court to order further enquiry and the order to discharge the accused should not be interfered with unless it is perverse or on the face of the record incorrect and Counsel submitted that even offence u/S.138 of N.I. Act was not made out. All the evidence was available in the form of documents and transactions between the complainant and accused regarding trading started on 01.04.2008 indicated that the margin money is paid in cash by the accused and accused No.3 Prabha Nagar had given the statements from time to time. However, there was collusion between the parties and accused No.3 Prabha Nagar had joint hands with the complainant Vijay Shah and post dated cheques given as security and payment had been made from time to time and taking cognizance of the offence u/S.138 of N.I. Act also would amount to abuse the process of Court. Counsel prayed that the impugned judgment be set aside.

6. Finally he relied in the matter of **G.D. Singh v. State of Madhya Pradesh, 1990 MPLJ 39** whereby at the time of framing of charge duty of prosecution to satisfy Court that the material on record makes out a prima facie case against the accused and it should not be based on conjectures and surmises and cannot furnish ground for framing of charge. Similarly while deciding the revision petition against the discharge order should not be lightly set aside; in case the revisional Court orders further enquiry, no direction to frame particular charge can be given. And in the present case this well-settled principles have been kept in mind. Counsel prayed that the impugned order be set aside.

7. Per contra, Counsel for the State as well as Counsel for the respondent No.2 have fully supported the judgment of Court below and submitted that when the signature on the cheques have been admitted by the accused Prabha Nagar then there was no need to doubt that offence u/S.138 N.I. Act would be made out. He placed reliance in the matter of **Hansraj Sharma @ Hansu v. Shivcharan Sharma, 2004 (3) MPLJ 485** whereby the word "further enquiry" used in Section 398 Cr.P.C. has been sparingly used and the Court held that : Nevertheless, direction of such nature could legally be given under Section 399 r/w Section 401 (1) of Cr.P.C. which is repository of the larger powers vested in the Court of Sessions. In the light of the aforesaid discussion, the direction given by the Additional Sessions judge seems to be well within his jurisdiction in exercise of revisional powers and revision is devoid of any merit, and is dismissed. He further relied on **Vinod Raghuvanshi v. Ajay Arora and others, [2014 (1) JLJ (SC)] 404** to state that the Court was considering the petition under Section 482 and 216 of the Cr.P.C. for offence under Section 420 and 120-B IPC and it held that prima facie satisfaction must be for the Court to proceed against the accused was sufficient for taking cognizance in complaint case and the Court should not quash criminal proceedings at threshold unless there were compelling circumstances to do so exist. The Court had held thus:

30. It is a settled legal proposition that while considering the case for quashing or a criminal proceedings the Court should not "kill a stillborn child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegation have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the Court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the Court embark upon an inquiry, whether the allegations in the complain are likely to be established be evidence nor should the Curt judge the probability, reliability or genuineness of the allegations made therein. More so, the Charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 Cr.P.C. So, The order passed even by the High Court or this Court is subject to the order which would be passed by the trial Court at a later stage.

8. Counsel submitted that the revisional Court had properly directed remand. He further relied on **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and another, (2005) SCC 89** where by the Apex Court held that when there were essential averments to be made in complaint regarding offence by company in offence u/S.138 of N.I. Act for dishonour of cheque; then, it is necessary to aver that at the time the offence was committed the person accused was in charge of, and responsible for the conduct of business of the company, without this averment being made in the complaint, the requirements of Section 141 cannot be said to be satisfied.

9. And in the instant case, Counsel submitted that the co-accused Prabha Nagar was the Manager of the Commodity Exchange Company and was entitled to issue cheques then it cannot be said that she was not responsible for issuance of cheques on behalf of the company what is to be seen at the time of framing of charge is whether the accused was involved in the commission of the offence? And whether there is material or ground to proceed against the accused? And only when the complaint does not constitute the offence against the accused, the complaint is liable to be dismissed. And in this sense there was no merit in the case. Hence, Counsel prayed that the petition be dismissed.

10. On considering the above submissions and the entire impugned judgment and the material, I find that the petition cannot be allowed since there is no infirmity in the order passed by the trial Court. Prima facie on consideration of the material that were placed before the Magistrate he has come to a conscious decision that there was no fraud and cheating as alleged by the petitioner. The accused was carrying on the business in the name of Lucky Chemical Corporation, and the accused Prabha Nagar has admitted to signature the cheques which were issued by her in her capacity being a Manager and she was responsible to manage the account; then, what is evident as has been admitted by the petitioner himself; there was transactions of trading of commodity between the parties allegations of cheating or fraud were not made out. What was prima facie evident was that it was a case of non-payment of money or dishonour of cheques. The revisional Court had however, directed further enquiry then further enquiry can be made u/S.156 (3)

of the Cr.P.C. and only then upon being satisfied the petitioner could has been discharged. However, considering the fact that the trial Court had already considered the evidence of Vaibhav Asawa and Nityanand Pradhan u/S.200 and 202 of Cr.P.C. and considering the documents including reply to notice given by the petitioner the learned Magistrate dismissed the complainant u/S.420 and 120 of IPC, because the ingredients of the alleged offence u/S.420 & 120-B of IPC were not made out and thus placing reliance in the matter of Rajaram (supra), I find that there was no impediment to the Magistrate from discharging the accused for offence u/S.420 & 120-B of the IPC since the Magistrate has considered at length documents that were before him and it was also not mandatory on record further evidence and ultimately conclusion reached by Magistrate led him to discharge the accused. Hence this Court find no reasons to interfere in the powers vested in the Court of Sessions.

11. The petitions are without merit and, therefore, dismissed as being bereft of merits.

12. Original order be retained in the record of Cr.R. No. 1163/2012 and a copy thereof be placed in the record of Cr.R. No.1191/2012.