

Fortune Multi Trader Vs Everett Travel Traders

Court: Calcutta High Court

Date of Decision: Jan. 14, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313, 326, 326(3)
Negotiable Instruments Act, 1881 (NI) â€” Section 138, 141, 142, 142(a), 143
Penal Code, 1860 (IPC) â€” Section 11

Citation: (2013) 1 JCC 79

Hon'ble Judges: Kanchan Chakraborty, J

Bench: Single Bench

Advocate: Amit Bhattacharyya, Mr. Y.Z. Dastoor, Ms. Mayukni Mitra and Mr. Indrajit Adhikari, for the Appellant;
Sandipan Ganguly, Ayan Bhattacharyya and Mr. Ayan Chakraborty, for the Respondent

Final Decision: Dismissed

Judgement

Kanchan Chakraborty, J.

M/s. Everett Travel Service lodged one complaint u/s 138 of the N.I. Act being no-C-129 of 1999 against 1)

M/s. Multi traders Ltd & 2) Bharat Kumar Nandi (hereinafter referred to as petitioners) in the court of Ld. 10th Metropolitan Magistrate,

Calcutta. The petitioners were found guilty and accordingly an order of conviction was recorded. The petitioners preferred appeals separately

challenging the order of conviction and sentence. The appeal preferred by Bharat Kumar Nandi was registered as Criminal Appeal No. 11 of

2006 while the appeal preferred by the M/s. Fortune Multi-traders Ltd. was registered as Criminal Appeal No.-12 of 2006. The Ld. Additional

Sessions Judge FT court no. 5, Calcutta disposed of both the appeals separately and had taken concurrent findings with slight modification in

respect of sentence. The petitioners Bharat Kumar Nandi and M/s. Multi traders Ltd. challenged the legality validity and propriety of the judgment

of the Ld. Additional court by filing these two revision applications CRR-2482 of 2007 and CRR-2616 of 2007, respectively. Since, the revision

applications are arising out of one judgment and points involved are same, both the applications are disposed of by this common judgment.

The petitioners have taken the following points in their applications: (i) that the Ld. Court failed to take note of the legal position that the

complainant not being a person in the eye of law having any legal entity, the petition of complaint filed through a representative, was not

maintainable in law; (ii) that the Ld. Court erred in not holding the trial u/s 326 of the Code of Criminal Procedure in view of section 143 of the

N.I. Act.; (iii) that the Ld. Court failed to take note of the fact that no authority to file the complaint was proved; (iv) that the Ld. Court erred in not

believing the testimony of the witness Anjan Banerjee in his cross-examination; (v) the judgments being otherwise bad in law, are liable to be set

aside.

At the Bar, the following decisions have been refereed to:

- (a) Saraswati Trading Company Vs. The State of Gujarat and Another,
- (b) Municipal council Vs. Prabhu Narain-AIR 68 (Raj) 297;
- (c) K. Ramachandra Rao and Others Vs. State of A.P. and Another,
- (d) Firm Sadasukh Janki Das Vs. Kishen Pershad- AIR 1918 P.C.;
- (e) M.M. Abbas Brothers and Others Vs. Chethandas Fathechand and Another,
- (f) Rajesh Bhalchandra Chalke Vs. State of Maharashtra and Emco Dynatorq Pvt. Ltd.,
- (g) Govind Ram Channani Vs. Latha & Ors. 2010 (1) Bankmann 266 (KAR)
- (h) Shankar Finance and Investments Vs. State of Andhra Pradesh and Others,
MMTC Limited & Anr. Vs. Med Chm. Vs. P. Limited (2002) SCC (Cri) 212.
- (i) Asish C. Shah Vs. M/s. Seth Developers Private Limited 2011 ALL M.R. (Cri) 1528.
- (j) Milind Shripad Chandurkar Vs. Kalim M. Khan and Another,
- (k) Janki Vashdeo Bhojwani and Another Vs. Indusind Bank Ltd. and Others,
- (l) Mandvi Co-op. Bank Ltd. Vs. Nimesh B. Thakore,
- (m) Rajen Sengupta Vs. State of West Bengal 2011 SCD 1185 (Cal)
- (n) Pradip Kumar Manhotra Vs. State of West Bengal 2011 SCD 1129 (Cal).
- (o) Swapan Mondal @ Swapan Kr. Mondal Vs. Godrej Agrovat Ltd.
- (p) Dir. S.C.T.I. for Med. Sci. and Tech. and Another Vs. M. Pushkaran,
- (q) Krishan Jarandan Bhat Vs. Dattatrayag. Hegde (2008) 2 SCC (Cri) 166.
- (r) Sumit Ranjan Chakraborty Vs. Tapas Kumar Nandi,
- (s) M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another,
- (t) Shivaji Sampat Jagtap Vs. Rajan Hiralal Arora and The State of Maharashtra,
- (u) Ranjan Sengupta Vs. The State of West Bengal and Another,
- (v) Rangappa Vs. Sri Mohan,

It would be proper to look into the prosecution in question to appreciate the entire matter. M/s. Everett Travel Service (herein after referred to as

the O.P.), a division of Everett India Private Ltd. had business transaction with M/s. Fortune Multi Traders Ltd. (hereinafter referred to as

Petitioner). In course of their business transaction, the O.P. time to time sold & delivered Air-tickets to the petitioner. A total sum of Rs.

2,83,605/- became due to the O.P. The O.P. raised a bill of such amount and the petitioner, in discharge of such liability, issued a cheque, being

number-474371 dated 26.10.99. The O.P. placed the said cheque to its banker for encashment but, it was returned due to ""payment stopped by

drawer"". A demand notice was served on the petitioner who, however, failed to make payment of the cheque amount within the stipulated period

of time. So, the prosecution against the petitioner was initiated under section-138 of the N.I. Act. The Ld. Trial court found that the O.P.

established the case satisfactorily and, accordingly, recorded conviction & sentence. The petitioner challenged the order by preferring an appeal

being no. 12 of 2006 and Ld. Appellate court had taken a concurrent finding of both facts and law. The petitioner has challenged the legality,

validity and propriety of that concurrent findings on the grounds already stated.

2. This court is not oblivious of fact that ordinarily, High court should not upset a concurrent findings in exercising its revisional jurisdiction. It is trite

law that only in the exceptional cases where gross violation of fundamental principle of law has occasioned & resulted in miscarriage of justice,

High court may make good the wrong but, in doing so, it is not supposed to act as appellate court by way of re-appreciating the evidence which

once has been done by the trial court and re appreciated by the appellate court. However, in this case, then petitioner has raised some questions of

law and, therefore, it is duty bound to answer the questions although, it appears, the Ld. Appellate answered all of them with reasons.

3. There are some admitted facts, such as, [a] there was business transaction between the parties; [b] that a bill was raised by the O.P. amounting

to Rs. 2,83,605/-; [c] that a cheque of Rs. 2,83,605/- was issued by the petitioner in favour of the. O.P.; [d] that said cheque was presented by

the O.P. before its banker; [e] that the cheque was returned because of ""payment stopped by the drawer"; [f] that a demand notice was served on

the petitioner and; [g] the petitioner did not make the payment within the time stipulated.

4. Mr. Amit Bhattacharyya and Mr. Dastoor, Ld. Counsels appearing for the petitioner tried their best to convince this court that there was no

lawful complainant and therefore, the complaint itself was not maintainable. It has been contend that the M/s. Everett Travel service is limb of

Everett India Private Ltd. Therefore. It is not a juristic person and can not be represented by any man. A complaint can only be filed, in view of

section 141 of the N.I. Act by a person, natural or juristic. The instant case was filed by one Mukhtar Ahmed, not by any juristic person or

representative of the juristic person. So, the very cognizance is hit by section 142(a) of the Act. It has also been empathetically suggested that the

division of a company being an agent can not be termed as "Payee/holder" of the cheque and that there is violation of incurable mandatory

provision, question of prejudice is immaterial.

5. Mr. Sandipan Ganguly and Mr. Ayan Bhattacharjee, Ld. Counsels for O.P. contended that The cheque in question (Ex-A/1) was issued in the

name of M/s. Everett Travel Service-not in the name of Everett India Private Ltd. The alleged business transactions were only between the

Petitioner and O.P. The Everett India Private Ltd. was nowhere in the picture. These fact have never been denied. The O.P. operates its business

separately even in a different name. It has further been contended by them that mere mentioning of the name of the main company in the cause title

of the petition of the complaint does not change the nature of the complaint and takes away the present complainants status as ""Payee/Holder of

the cheque"".

6. It is settled principle of law that in construing a complaint, neither a hypothetical nor a fault finding approach should be adapted so as to negate

the same. Looking back to the complaint petition in question, it appears clearly that there was direct business transaction between the parties and

Everett India Private Ltd. was never been a party to such business transactions. The cheque in dispute was issued by the petitioner in the name of

none but the O.P. The complaint petition reveals clearly also that the cheque was placed by the O.P. with its banker which also suggests that it

maintains bank A/C independently from the Everett India Private Ltd. It is also explicit enough from the petition of complaint that all the legal

obligations arising out of the bill placed by the O.P. to the petitioner are attributed to the petitioner and that the petitioner was supposed to

discharge that legal obligation towards the bill placed by the O.P. and none else. There is no denial of these factual aspects from the petitioners

side. Therefore, simply because of mentioning of the name of Everett India Private Ltd in the Cause Title of the complaint, does not necessarily

defeat the right of the complainant to file a petition of complaint u/s 138 of the N.I. Act.

7. It would be pertinent to see the relevant provisions of law in this regard Section 142(a) of the N.I. Act says: ""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"".

8. The languages used in the section unequivocally and unmistakably qualify a payee of a cheque to lodge a complaint for prosecuting the drawer

of the cheque u/s 138 if other requirements are fulfilled.

9. Section 7 of the Act defines ""Payee"" as the person named in the instrument, to whom or to whose order the money is by the instrument directed

to be paid.

10. Explanation (a) of the Section 141 says ""Company"" means any body corporate and includes a firm or other association of individuals.

11. Now, The question is whether the complainant can be said to be a person/payee as defined u/s 7 of the Act. The word "person" is defined u/s

11 of Indian Penal Code, as the person, which includes any company or association or body corporate, whether incorporated or not. The

explanation(a) of section 141 of the N.I. Act are extended to the other association of individuals. In the instant case, the complainant is M/s.

Everett Travel Service, an unit of Everett India private Ltd. Therefore, the complainant is not a company within the meaning of the Company Act.

It is not a proprietary firm or a partnership firm, at least, does not appear so from the petition of complaint. Then what is it? I, in such a

circumstance it can well be said that it a business association of individuals, although not incorporated. So, it squarely comes within the exception

(a) of Section 141. It has already been found that the O.P. carries on its business independently and maintains its own bank a/c. It receives orders

for Air-tickets in its own name. It places bills to its customers and customers also issue cheques in its name. In such a situation, the complainant

M/s. Everett Travel Service is the ""payee"" as defined in the clause (a) of Section 142 of the Act and, as such, can maintain a complaint through its

agent or authorized person. Its legal entity has been accepted and also manifested clearly from the facts of the case, conduct of the parties and the

way the deal was done by the parties to the case. So, in my humble estimate, merely mentioning the name of Everett Travel Service in the caption

of the petition of complaint has not taken away the right to file complaint by the payee itself.

12. In Saraswati Trading Co. (supra), the factual aspects are quite different than that court. In that case, the complainant was a firm having no legal

entity. The Hon"ble court did not consider about the case wherein a body of association is a complaint and what would be the consequences if it is

not filed through the authorized representative.

13. In G. Bhikshathy C.Y. Somayajulu (supra) it was held that power of attorney holder can file complaint after obtaining permission of the court

either before or after filing of the complaint. In fact, in the case in hands, courts permission was obtained by the complainant to be represented by

its authorized agents.

14. Again, the decision of the Hon^{ble} Privy Council (supra) has no application factually. The M/s. Abbas Brothers, case (supra) was related to a

partnership firm and execution of a promissory note by a partner. The decision of the Hon^{ble} Full Bench of Bombay High Court is, mainly, related

to a question as to what the word "evidence" imply. It has dealt with the scope of the sections 143, 144 & 145 of the act.

15. In Govind Ram Chanani (supra), the complainant was a partnership firm and it was held that an authorized person can maintain a complaint

but, not in his personal capacity.

16. In Shankar Finance & Investments (supra) it was held a proprietary concerned can well be represented by its power of attorney holder, if

properly executed.

17. It has been decided by the Hon^{ble} Apex court in M.M.T.C. & another (supra), that a complaint can not be filed by a company through its

employee who is not having necessary authorization.

18. In Milind Shripad Chandurkar (supra), it was held that applicant has to prove nexus or connection with the by adducing evidence. This is not a

question before us because, all the witnesses examined were represented by the complainant with permission of the court prior to and after

commencement of the trial and at no point of time, their authority was challenged by the petitioner. Their nexus with the complainant was not also

questioned.

19. Apart from whatever has been stated above, it can well be said that all the points raised by the petitioners were raised in trial court and in the

Appellate court and both the courts answered the questions assigning satisfactory reasons.

20. In the case in hands, there is a payee in whose name a cheque was issued by a drawer (petitioner) in discharge of a legal liability. The cheque

was bounced because of "stop payment direction" and the cheque amount was not paid in time despite receiving of demand notice sent by the

payee. The fact the payee in whose name the cheque was issued runs business independently receives orders from different customers like the

petitioner, maintains independent bank a/c in its name is no way precluded to lodge a complaint through its agent with the permission of the court.

It being a separate body or association of persons formed for purposes above should be treated as a payee within the meaning of the act and

entitled to file a complaint through its agent/s. A statute like N.I. Act should not be interpreted narrowly so as to negate a genuine claim. Parties

win or defeat on merit not on technicalities. So while interpreting a special statute like N.I. Act, approach should be pragmatic and practicability

should not be sacrificed. The proposition of law propounded by Mr. Dastoor & Mr. Bhattacharjee does not appear to be convincing to this court.

21. As far as other points raised by the petitioner are concerned, this court finds that those are mostly related to factual matters based on evidence

recorded by the trial court. Be that as it may, on perusal of the record of the case it appears that Mukhtar Ahmed who represented the

complainant was substituted by one Manas Ranjan Roy initially and thereafter, by Anjan Banerjee. The Ex-5 was admitted into evidence without

any objection. No question, even in form of suggestion, was put to the witnesses regarding their authority. This question has been raised for the first

time in this revision. Therefore, this court is not at all interested relook into that factual aspects by way of re-appreciation of the evidence which has

already been appreciated by the trial court and re appreciated by the appellate court.

22. It is true that u/s 143 of the act, the proceeding would have been tried summarily. The record says that the case was instituted in 1999 and the

trial commenced long before 6.2.2003 i.e., before, the amendment came into play. So, the provisions of the section 326(3) of the of criminal

procedure was not an impediment for the court to conclude the trial as summons case despite recording of evidence by different Magistrate.

23. Regarding courts failure to reexamine the accused after admitting the disputed cheque in evidence, suffice it to say that a cursory perusal of the

case record makes it clear that the accused was asked for clarification in respect of the issuance of the cheque specifically. It is not that the

accused was not at all asked to clarify. The accused being well aware of the fact of issuance of the cheque, had given specific answer. In fact, it

was not denied by the accuse in so many words and specifically. In the ultimate result, the question of prejudice comes in and this court thinks that

the accused was not prejudiced in any manner for not examining him again u/s 313 of the Code.

24. In view of the discussion above, the revision applications fail and stand dismissed. The concurrent findings is not required to be up-set. The

applications are disposed of. No order of cost is passed.