

(2008) 02 CAL CK 0018

Calcutta High Court

Case No: C.R.R. No. 3298 of 2007 with C.R.R. No. 3299 of 2007 and C.R.R. No. 3303 of 2007

Rajendra Agarwal

APPELLANT

Vs

M/s Xpro India Limited, Biax
Division and Another

RESPONDENT

Date of Decision: Feb. 7, 2008

Acts Referred:

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

Hon'ble Judges: Arunabha Basu, J

Bench: Single Bench

Advocate: ; Amit Bhattacherjee, Sandipan Ganguly, Ayan Bhattacherjee, Indrajit Adhikari and Mr. Kallol Ghosh, for the Respondent

Final Decision: Dismissed

Judgement

Arunabha Basu, J.

By this order the above noted three revisional applications being registered as Criminal Revision No.3298/2007, Criminal Revision No.3299/2007 and Criminal Revision No.3303/2007 will be decided by this Court, in view of common question of facts and law involved therein and also in view of the fact that parties are same.

2. During the course of hearing, no appearance was effected by the learned advocates for the petitioner and the matter is heard and decided after hearing the submission by learned advocates appealing for the Opposite Party. For proper appreciation of the matter, it is required to highlight separately the facts involved in connection with above noted three revisional applications.

3. This revisional application arises in connection with the proceeding being complaint case No.C/5686 of 2003 now pending before the Court of learned Metropolitan Magistrate, 8th Court, Calcutta. Petitioner herein has questioned the legality and validity of the order passed by Chief Judge, City Sessions Court in connection with Criminal Revision Case No. 14 of 2007 wherein and where under the

learned Court below dismissed the revision.

4. The contention of the petitioner in this case was that the complaint lodged by an authorised representative and power of attorney holder is not maintainable in the eye of law. Learned Court below on consideration of Supreme Court's decision in Adalat Prasad's case reported in 2005(1) CCC 570 (S.C.): 2004 SCC (Cri) 1927, dismissed the aforesaid revision.

5. Petitioner is mainly aggrieved that petition of complaint is filed by one Krishna Kumar Saboo representing the complainant Company and the petition of complaint on behalf of the company was presented through one Krishna Kumar Saboo, who is the Manager (Marketing) and the authorised representative.

6. The said complaint is for dishonour of cheque bearing No.401014 dated 28.02.2003 for Rs.75,000/- and cheque No.401015 dated 06.03.2003 for Rs.74,265/-. The complaint was lodged against the petitioner u/s 138 of the Negotiable Instruments Act.

Criminal Revision No.3299/2007

7. In C.R.R.3299/2007 petitioner moved this Court being dissatisfied with the order passed by learned Chief Judge, City Sessions Court in Criminal Revision No. 15 of 2007 in connection with complaint Case No.C/5688 of 2003 pending before the Court of learned Metropolitan Magistrate, 8th Court, Calcutta.

8. The contention of the petitioner before the learned Revisional Court in connection with Criminal Revisional No. 15 of 2007 was more or less on the same grounds about non maintainability of the petition of complaint as the complaint is filed by an authorised representative and power of attorney holder, which is not maintainable in the eye of law.

9. Needless to add, the learned Court below dismissed the said revision following the Supreme Court's decision in Adalat Prasad's case (supra).

10. It appears from the petition of complaint that the complaint was Instituted by the Company being represented by Manager (Marketing) and authorised representative Shri Krishna Kumar Saboo.

Criminal Revision No.3303/2007

11. The application in connection with C.R.R.3303/2007 is filed by the petitioner questioning the order dated 24.05.2007 by learned Chief Judge, City Sessions Court in connection with Criminal Revision No. 16 of 2007, arising out of Complaint Case No.C/ 5689 of 2003 u/s 138 Negotiable Instruments Act, pending before the Court learned Metropolitan Magistrate, 8th Court, Calcutta.

12. Learned Court below considered the prayer that the petition of complaint is not maintainable as the same is filed by "an authorised representative and power of

attorney holder. The learned Court below on consideration of Supreme Court's decision in Adalat Prasad's case (supra) dismissed the said revision.

13. In this case also the petition of complaint u/s 138 Negotiable Instrument Act is filed by the Company being represented by Manager (Marketing) and authorised representative Shri Krishna Kumar Saboo.

14. In all the three cases as mentioned above the petitioners are arrayed as accused before the learned Court below.

15. The only point that requires consideration being common in all cases that in connection with case u/s 138 of the Negotiable Instruments Act, between the same parties whether complaint presented by the authorised representative of the company will be maintainable, when prosecution is Instituted on behalf of the company. "The same is required to be decided under this common order, which will be binding on all the three revisional applications u/s 482 of the Code of Criminal Procedure as mentioned above.

16. Learned advocate appearing for the Opposite Party submitted that question as to maintainability of the application u/s 138 of the Negotiable Instrument Act, where the complaint is lodged on behalf of the company is already decided by the Supreme Court in M/s M.M.T.C. Ltd. & Anr. vs. M/s Medchl Chemicals & Pharma P.Ltd. reported in 2002(1) CCC 13 (S.C.) : 2001 ACJ 636 (S.C.): 2002 Cri 247. Two Judges Bench of the Hon"ble Supreme Court considered the case u/s 138 of the Negotiable Instruments Act when the complainant is the company. Supreme Court in this decision took into consideration the earlier decision in the case of Associated Cement Co. Ltd. vs. Keshvan, 1998(1) CCC 482 (S. C.): 1998 ACJ 238 (S. C.) and held at para 12 of the aforesaid judgment, which is set out below: (CCC, p. 16)

"It has been held by this Court that the complainant has to be a corporeal person who is capable of making a physical appearance in the Court. It has been held that if a complaint is made in the name of a incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the Court. It is held that the court looks upon the natural person to, be the complainant for all practical purposes. It is held that when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complaint to represent the former in court proceedings. It has further been held that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first Instance, alone can continue to represent the company till the end of the proceedings. It has been held that there may be occasions when different persons can represent the company. It has been held that it is open to the de jure complainant company to seek permission of the Court for sending any other person to represent the company in the Court. Thus, even presuming, that initially there was no authority, still the Company can, at any stage, rectify that defect. At a subsequent stage of the Company can send a person who is

competent to represent the Company. The complaints could thus not have been quashed on this ground." (emphasis supplied)

17. Supreme Court decided that where the complaint is made in the name of a incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in a Court. It is held that the Court looks upon the natural person to be the complainant for all practical purposes. In case of company being the complainant in connection with a criminal prosecution, the company being a juristic person is a *de jure* complainant and it must necessarily associate a human being as a *de facto* complaint to represent the former in court proceedings.

18. u/s 142 of the Negotiable Instruments Act 1881 it is provided that the cognizance shall be taken upon a complaint made by the payee or as the case may be, the holder in due course of the cheque. The section itself incorporates a class of persons who can fall within the category of complainant. The person, who is an authorised representative of the Company certainly can lodge complaint on behalf of the company because the complaint was not personally lodged by him but he is representing the complainant, who is the company. The company being a juristic person shall be a *de jure* complainant, while the person representing the Company will be the *de facto* complainant. This by itself does not and cannot change the complexion of the case as the complaint filed before the Court will be by the company.

19. Similar point was considered by this Court in Premier Medical Supply & Stores Proprietor Premier Distributors (Calcutta) Pvt. Ltd. vs. Pharma Traders & others Reported in 2006(3) 1CLR 611, Hon"ble Single Judge of this Court on consideration of the earlier decision of Supreme court in M.M. T.C. Ltd. & Anr. (Supra) considered the scope of Section 142 of the Negotiable Instruments Act and upheld the contention that while lodging the complaint u/s 138 of the Negotiable Instruments Act by the Company, the same can be filed by the authorised representative of the Company. Lastly it must be pointed out that so far as all the three cases are concerned, the complainant is the company which was represented by its authorised representative. Complainant being a juristic person cannot act on his own and if the company is not permitted to be represented by a real person, then it will lead to an absurd proposition as because the company, even if, the aggrieved party cannot lodge any complaint. A juristic person can only act through a natural person who is its authorised representative. The question whether the authorised representative is at all representing the company is a matter exclusively between the company and the said authorised representative and in my view the same cannot be questioned by the petitioners who are accused in connection with the proceeding u/s 138 of the Negotiable Instruments Act.

20. In view of my above discussion, all the three revisional applications u/s 482 of the code of Criminal Procedure is devoid of any merit and stands dismissed.

21. view of the fact that complaint is lodged in the year 2003 and unnecessarily dragged before several courts by the petition herein. The learned Magistrate is directed to effect expeditious disposal of the case after conducting trial following the provisions of Section 309 of the Code of Criminal Procedure. Learned Magistrate shall not grant unnecessary adjournment and shall ensure that the trial is completed within a period of six months from the date of receipt/communication of the order.

22. The Criminal Revisions being C.R.R.3298/2007, C.R.R.3299/2007 and C.R.R.3303/2007 filed u/s 482 or the Code of Criminal Procedure devoid of any merit and stands dismissed.

23. There shall be no order as to costs.

24. Criminal Section is directed to send a copy of the order to learned Court below Immediately.

25. Criminal Section is directed to supply urgent certified copy of the order as and when applied for.