AIR 2011 Delhi 307

Delhi High Court

Case No: Criminal Revision Petition No. 733 of 2006 and C.M. Application No. 1533 of 2009

V.L. Personal Care (P) Ltd.	APPELLANT
Vs	
State and Another	RESPONDENT

Date of Decision: Aug. 31, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3)
- Negotiable Instruments Act, 1881 (NI) - Section 138
- Penal Code, 1860 (IPC) - Section 406, 409, 467, 468, 471

Citation: AIR 2011 Delhi 307

Hon'ble Judges: S.N. Dhingra, J

Bench: Single Bench

Advocate: Mohit Mathur, Shishir Mathur and Mrinal Bharti, for the Appellant; O.P. Saxena, APP and Udayan Jain, for R-2, for the Respondent

Final Decision: Dismissed

Judgement

Shiv Narayan Dhingra, J.
This revision petition has been filed by the petitioner assailing order dated 7% July, 2006 passed by learned Metropolitan Magistrate dismissing the complaint filed by the petitioner under Sections 409/467/468/471 IPC.

2. Brief facts relevant for the purpose of deciding this petition are that a cheque issued by the complainant in favour of M/s. Vapra Exports Pvt. Ltd. was dishonoured. On this M/s. Vapra Exports Pvt. Ltd. filed a criminal complaint u/s 138 of Negotiable Instruments Act in the court of Metropolitan Magistrate at Mumbai. The complainant i.e. present petitioner, however, filed a complaint at Police Station Hauz Khas through his sister concern M/s. Curls and Curves India Limited (CCIL) on 5th December, 2002. Another criminal complaint was filed by the petitioner directly at Police Station Hauz Khas on 11th March, 2003. Police, however, found that no criminal offence was made out. The petitioner then

filed a complaint u/s 156(3) Cr.P.C. for registration of FIR. which was dismissed by the court and the court directed for recording of complainant evidence. After the complainant evidence was recorded, learned trial court came to conclusion that no offence was made out against the respondent No. 2.

3. The story put forward in the criminal complaint by the complainant is that Sh. Harshad Rana (respondent No. 2) was a Director of M/s. Vapra Exports Pvt. Ltd. and had approached CCIL in the year 2001. M/s. Curls and Curves India Limited was parent company of the present petitioner. Subsequently, Sh. Harshad Rana left M/s. Vapra Exports Pvt. Ltd. on 10th March, 2002 and joined as a Director with the complainant company and was given responsibility and control over functioning of the complainant company. While Sh. Harshad Rana was working as a Director, certain products of complainant company were to be launched in Jaipur in September, 2002 and CFO of CCIL, Sh. Narinder Kumar, was induced by him to believe that some cheques were required to be signed by him for the purpose of paying expenses of the launch. So, blank cheques were signed by Sh. Narender Kumar believing that Sh. Harshad Rana would be in a position to fill the date and amount and the name of the payee. It was alleged that these cheques were misappropriated by Sh. Harshad Rana and landed into the hands of M/s. Vapra Exports Pvt. Ltd. Thus, the offence was committed by Harshad Rana u/s 409 and other provisions of IPC.

4. The learned Metropolitan Magistrate on going through different complaints filed by the complainant and its parent company, found that the version of the complainant had been changing from one complaint to other complaint. Learned Metropolitan Magistrate also found that the ingredients of criminal breach of trust were completely lacking and no ingredient of dishonest misappropriation of the entrusted property to one"s own use was present. It was also found that in the complaint to SHO dated 11th March, 2003, there was no mention of the cheques being misappropriated. Learned Metropolitan Magistrate, therefore, dismissed the complaint.

5. It is submitted by counsel for the petitioner that a cheque was a property and if it was entrusted to the respondent and misappropriated, an offence u/s 406 IPC was made out. The petitioner relied on Suryalakshmi Cotton Mills Ltd. Vs. Rajvir Industries Ltd. and Others, wherein the Supreme Court observed as under:

24. However, a case for proceeding against the respondents u/s 406 has, in our opinion, been made out. A cheque being a property, the same was entrusted to the respondents. If the said property has been misappropriated or has been used for a purpose for which the same had not been handed over, a case u/s 406 may be found to have been made out. It may be true that even in a proceeding u/s 138 of the Negotiable Instruments Act, the appellant could raise a defence that the cheques were not meant to be used towards discharge of a lawful liability or a debt, but the same by itself in our opinion would not mean that in an appropriate case, a complaint petition cannot be allowed to be filed.

6. In the present case, dispute is not whether a cheque was a property or not. Learned Metropolitan Magistrate has not refused to take cognizance on the ground that the cheque was not a property. Learned Metropolitan Magistrate had found that there was no substance in the complaint and allegations did not disclose commission of an offence and the petitioner had made contradictory allegations in various complaints.

7. It is settled law that criminal justice system should not be allowed to be misused. Before summoning an accused, complaint and the complainant evidence must be scrutinized to see if an offence was committed or the court was being used as a tool. In this case, learned Metropolitan Magistrate went through all the documents and found that different stands were being taken by the petitioner at different places and the story of entrustment made by the petitioner was not trustworthy and this version was not put forward by the petitioner at the first instance when the complaint was filed to the SHO. This was invented later on when the complaint was filed before the court of Metropolitan Magistrate. I consider that where an effort is made by any complainant to use the criminal justice system as a tool or as a counter blast to dishonour of cheque, it is better that such an effort is curbed at initial stage.

8. I find no infirmity in the order of the learned Metropolitan Magistrate. The petition is hereby dismissed with costs of Rs. 25,000/- being a frivolous petition.