

(2012) 04 DEL CK 0420

Delhi High Court

Case No: Criminal M.C. 1437 of 2012 and Criminal M.As 5110-5111 of 2012

Rajeev Bakshi

APPELLANT

Vs

State of NCT and Another

RESPONDENT

Date of Decision: April 27, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 138
- Penal Code, 1860 (IPC) - Section 120B, 406, 420

Citation: (2012) 189 DLT 489

Hon'ble Judges: M.L. Mehta, J

Bench: Single Bench

Advocate: Vikas Pahwa, with Mr. Saurabh Soni, for the Appellant; Fizani Husain, APP, for the Respondent

Final Decision: Dismissed

Judgement

M.L. Mehta, J.

This petition u/s 482 Cr. P.C. seeks quashing of summoning order dated 03.03.2012 of ACMM, Saket District Courts, Delhi, in FIR No. 07 of 2010 P.S. Fatehpur Beri registered u/s 420/406 read with section 120B IPC. The allegations in brief against the petitioner are that he was one of the Directors of M/s. Dimensions Investment and Securities Ltd. (hereinafter referred to as "DIS Ltd." for short). A complaint was made against the company and its Directors including the petitioner by one Vijender Kumar, authorized representative of M/s. Regal Trade Link Pvt. Ltd. Since no action was taken by the police, complaint was made to the ACMM and on his directions; the aforesaid FIR was registered against the DIS Ltd and its Directors including the petitioner. The main allegations were that the DIS Ltd through its Directors had taken loan of Rs.20.00 crores vide agreement dated 10th December 2007 and as agreed they gave four post dated Cheques of Rs. 5.00 crore each with the assurance

that all the cheques on presentation would be honoured. Later those cheques were replaced by the DIS Ltd. by another four post dated cheques on 28.12.2008 on the assurances that the same on presentation would be honoured. Three out of those cheques got dishonoured on account of insufficient funds and the one due to difference in signatures. When the complainant contacted the accused persons, they not only refused to listen, but they refused to talk to the complainant on the issue. It is alleged that with regard to the three cheques which got dishonoured on account of insufficient funds, complaints u/s 138 N.I. Act were filed which are pending against the accused. It is alleged that the cheque of Rs. 5.00 crore which was dishonoured on account of difference in signatures was given with dishonest intention from the beginning by the accused in conspiracy with each other. It was also alleged that all the Directors including the petitioner were incharge and responsible for the conduct of affairs of the company DIS Ltd. and they actively participated in the transaction. It is also alleged that the accused persons have misappropriated the amount and have committed criminal breach of trust.

2. The police filed closure report before the Court to which objections were filed by the complainant. The ACMM vide the impugned order found the objections tenable and turned down the closure report and took cognizance against the accused persons and issued them summons. It is this order of the ACMM that has been assailed by the petitioner.

3. The main ground that has been raised by the petitioner is that he was not the Director of the DIS Ltd. on the day of issued of cheque dated 29.03.2009. It was submitted that he had resigned from the Directorship of this company on 27th March 2009 and his resignation was also accepted by the company on the same day. It is also submitted that intimation in this regard might have been given by the company in form 32 to the Registrar of the Companies (ROC).

4. I have heard the learned counsel for the petitioner and perused the record.

5. The petitioner was appointed as Director of this company on 27.01.2008 and allegedly had resigned on 27th March, 2009 by submitting his resignation letter. The cheque in question was dated 29th March 2009. However, it is seen that the allegations are that these post dated cheques were given as replacement of the four cheques given earlier by the accused company. The earlier cheques were of the dates of December 2008 and February 2009. It would be seen that at the relevant time of issue of previous four cheques and the subsequent four cheques including the cheque in question, the petitioner was a Director of the company. Though the cheque is dated 29th March 2009, but the same was given on 28th December 2008. The plea that he had resigned on 27.03.2009 i.e. two days before the date of this cheques is apparently unbelievable. In any case, since the cheque in question was given on 28.12.2008, the plea of resignation on 27.03.2009 would not be of much relevance. There is nothing on record to show that any intimation in this regard was given by the petitioner or the DIS company to the Registrar of Companies which is a

mandatory requirement. Even otherwise it cannot be concluded with certainty that he had in fact resigned and if so, from what date. This was a triable issue. It would have to be decided at trial.

6. There are specific allegations against the Directors including the petitioner that they were all incharge and responsible to the conduct and affairs of the company. The loan taken was of huge amount of Rs.20.00 crore. It was taken for corporate purposes of the company. The post dated cheques of Rs.5.00 crore each were given as towards its repayment. It is, apparently, unbelievable that such a huge amount of cheques would be returned without the knowledge of the Directors. It is also the allegation of the complainant that all the Directors were involved in the transactions which is also a triable issue and cannot be discarded at this stage. It came to be revealed during investigation that at no point of time there was sufficient bank balance in the bank account to clear the cheques. Further from the FSL report of the handwriting expert it also came to be revealed that on the cheque in question the tint & lustre of ink of figure "0" at thousands place was found different from the tint & lustre of the ink of the figure 50000000/ (5.00 crore) written on the cheque.

7. The Hon"ble Supreme Court has repeatedly cautioned to the exercise of powers u/s 482 Cr. P.C. by observing that the same should be used sparingly and with great caution and not to throw out the legitimate prosecution at the threshold. The scope of exercise of power u/s 482 Cr. P.C. is not to short-circuit a transaction and bring about a sudden death. The Supreme Court in the case of [State of Andhra Pradesh Vs. Golconda Linga Swamy and Another](#), held as under:

The powers possessed by the High Court u/s 482 of the Code of Criminal Procedure, 1973 are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court, being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. The complaint/F.I.R. has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the F.I.R. that the ingredients of the offence or offences are disclosed

and there is no material to show that the complaint/F.I.R. is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding.

8. In [Rajesh Bajaj Vs. State NCT of Delhi and Others](#), this Court held: (SCC pp. 262-63, paras 9 & 11)

9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent.

11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realized later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

In view of my above discussion, it could not be said to be a case where there was no allegation or legal evidence or the evidence was inconsistent. It also cannot be said that the allegations made in the complaint even if they are taken at their face value and accepted in entirety to be correct do not make out a case against the petitioner u/s 420/406 read with section 120B IPC. I do not find any reason to thwart the prosecution at its inception. Hence the petition having no merit is hereby dismissed.