

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: July 11, 2008

Date of decision: August 8, 2008

CRL M C No. 2950 of 2005

SANJAY BANAIK

... Appellant

Through: Mr. Narender Vashisht, Advocate

versus

STATE & ANR.

.... Respondents

Through : Mr. Pawan Behl, Advocate
for R-1/State.

None for R-2.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

JUDGMENT

DR. S. MURALIDHAR

1. This petition under Section 482 of the Code of Criminal Procedure 1973 ('CrPC') seeking the quashing of Criminal Complaint No. 521/01 titled *M/s. B.K. Embroidery v. M/s. Right Channel Resources & Anr* under Section 138 read with Section 142 of the Negotiable Instruments Act 1888 (NI Act) pending in the court of the learned Metropolitan Magistrate ('MM'), New Delhi and all proceedings consequential thereto.

2. This Court has heard Mr. Narender Vashishta, learned Advocate for the petitioner. Despite service none appeared for the Respondent No.2 complainant.

3. The case of the complainant M/s. B.K. Embroidery is that it rendered embroidery services to accused No.1 M/s. Right Channel Resources of which the accused No.2 Sanjay Banaik is the Proprietor. In discharge of its liability for the services rendered, the accused issued Cheque No. 052863 dated 11th March 2004 for a sum of Rs.50,000 in favour of the complainant. The cheque when presented for payment was dishonored on the ground of 'insufficient funds'. According to the complainant the accused when contacted asked the cheque to be re-presented assuring that this time it would be honoured. However, it was again dishonoured for the same reason on 25th May 2004. Thereafter the other legal formalities were completed and the aforementioned complaint was filed. Interestingly, accused No.3 in the complaint was described as follows:

“3. Cheque No. 52863 Signatory of M/s. Right Channel Resources, B-6/1 Okhla Industrial Area, Phase-II, New Delhi – 110020 through its Proprietor Mr. Sanjay Vinayak.”

4. By an order dated 2nd August 2004 the learned MM issued summons to the petitioners for the offence under Section 138 of the Negotiable Instrument Act 1881. A perusal of the trial court record shows that the Petitioner Sanjay Banaik informed the Court at the hearing on 3rd May 2005 that he was neither a proprietor of M/s. Right Channel Resources nor the signatory of the cheque in question. The proceedings on that day show that learned counsel for the complainant

sought time to take appropriate steps. At the hearing on 6th June 2005 the learned MM recorded the following order:

“6.6.2005

Present: Mr. P.M. Sharma for the complainant.

On an application complainant is exempted from personal appearance for today only.

An application on behalf of the complainant for taking cognizance against Harender Singh Pannu moved.

Accused no.2 absent. Learned counsel for the complainant submits that although accused no.2 is neither a signatory of the cheque nor director/proprietor of M/s. Right Channel Resources but now should be issued against.

Heard. Perused. Keeping in view the facts and circumstances of the case I am of the considered opinion that at this stage presence of accused no.2 is not required before this Court.

Put up for consideration of the application on 6.8.2005.”

5. It appears that thereafter an application was filed by the complainant seeking to summon Shri H.S. Pannu as an accused in the case. On the said application, the following order was passed by the learned MM on 3rd June 2006:

“3.6.2006

Vide this order I shall dispose of application of the complainant for summoning of one Shri H.S. Pannu proprietor of M/s. Right Channel Resources. Reply to the application has been filed on behalf of accused No.2 Shri Sanjay Vinayak who had been summoned as the proprietor of M/s. Right Channel Resources by this Court.

I have heard the counsel for the parties at length and perused the record in detail. It

has come to the knowledge of the complainant that proprietor of M/s. Right Channel Resources and the signatory of the cheque in question in this case is one H.S. Pannu only after same was disclosed by learned counsel for the accused no.2 Sanjay Vinayak who submitted that he has nothing to do with this case or with the cheque in dispute or with M/s. Right Channel Resources. Interestingly Mr. Sanjay Vinayak had been receiving the process issued by this Court through the proprietor of M/s. Right Channel Resources at the address mentioned in the present complaint. On one occasion process was even received by Shri Siddhartha Dubey who reported that he is the HRD and Accounts Manager of M/s. Right Channel Resources and looks after its litigation in the courts but no person by the name of Sanjay Vinayak was found at M/s. Right Channel Resources. However so far neither Mr. Subhash Dubey has appeared before this Court nor the actual proprietor of M/s. Right Channel Resources has appeared before this Court and it has been kept in dark for quite some time as to who is the proprietor of M/s. Right Channel Resources and signatory of the cheque in dispute. I am of the considered opinion that relief sought by the complainant in the present application can only be provided after there is some evidence on record to connect Mr. H.S. Pannu with M/s. Right Channel Resources or the cheque in dispute. Accordingly this application is disposed of with directions to the complainant to lead further evidence if any.

Put up for C.E. on 14.7.2006 as prayed.”

6. Another attempt was made by the complainant for summoning Shri Pannu as an accused in this case. By an order 20th September 2007 this request was rejected and the following order was passed:

“20.9.2007

Present: Counsel Sh. Pavitra Mohan Sharma
for complainant.

Counsel Sh. Narender Vashisht for accused Sanjay Vinayak,.

Today the matter was fixed for order on the point of summoning Mr. Harender Singh Pannu as an accused in the present case. I have heard the counsel for the complainant and also gone through the material available on record.

As per record the complainant filed the present complaint under Section 138 N.I. Act on 30.7.2004 against three accused persons namely 1. M/s. Right Channel Resources B-6/1, Okhla Industrial Area, Phase II, New Delhi through its proprietor M/s. Sanjay Vinayak 2. Mr. Sanjay Vinayak proprietor and 3 cheque no. 52863 signatory of M/s. Right Channel Resources through its proprietor Mr. Sanjay Vinayak. After leading pre summoning evidence by way of affidavit, cognizance was taken vide order dated 2.8.2004 and the summons were issued to accused persons. Accused put appearance before the Court and obtained bail vide order dated 14.3.2005. Subsequently, it was brought to the notice of the Court on 3.5.2005 that accused Sanjay Vinayak is neither the proprietor nor the signatory of the cheque in question and thereafter, the matter was adjourned to 6.6.2005, on which date the complainant moved an application for summoning Mr. Harender Singh Pannu stating inter alia that in view of the submissions of accused No.2 Sanjay Vinayak that Mr. Harender Singh Pannu be summoned as an accused in the present case. It was also stated in the application that it has later come to the notice that Mr. Harender Singh Pannu was the proprietor of accused no.1 and signatory to the cheque in question and thereafter cognizance against him should also be taken under Section 138 N.I. Act and he be summoned as an accused. After hearing the arguments on the aforesaid application the application was disposed off vide order dated 3.6.2006 by my learned Predecessor Court with direction to complainant to lead further evidence to connect Mr. Harender Singh Pannu with M/s. Right Channel Resources and the matter was adjourned to 14.7.2006 for complainant evidence. In

compliance, the complainant tendered the affidavits of CW 1 Mr. Prakash, CW-2 Rajnikant Mishra and CW-3 Mr. Ashok Choudhary on 18.4.2007. After tendering the aforesaid affidavits it is prayed by counsel for the complainant that in view of the evidence on record Mr. Harender Singh Pannu be also summoned as an accused.

Having heard the submissions of learned counsel for the complainant and gone through the material available on record I am not in agreement with the submissions of counsel for the complainant. It is amply clear that the complainant made three accused persons in the present case who appears to be only one accused person i.e. Mr. Sanjay Vinayak the complainant has not shown any material to this Court on the basis of which it has come to the notice of the complainant that Mr. Harender Singh Pannu was the proprietor of the proprietorship concerned i.e. M/s. Right Channel Resources or he has signed the cheque in question, this is a complaint case and it was the foremost duty of the complainant to trace out the specific details of the cheques as well as regarding the identity of its drawer. It appears that the complainant did not make responsible efforts to establish the identity of the drawer of the cheque in question. The complainant is not sure about the stand to take against the accused persons. The complainant lead evidence to connect Mr. Harender Singh Pannu solely on the submissions of accused no.2 Mr. Sanjay Vinayak. I fail to understand as to under which provision of law Mr. Harender Singh Pannu be summoned as an accused in the present case. It is also clear that the notice under Section 251 CrPC is yet to be framed in the present case and accordingly, the stage for proceedings under Section 319 CrPC has not come so far. The affidavit of CW1, CW2 and CW3 tendered on 18.4.2007 are not sufficient to connect Mr. Harender Singh Pannu with the commission of offence in the present case. In the given circumstances, I do not find any merit in the submissions of counsel for the complainant to summon Mr. Harender Singh Pannu as an accused in the

present case. The request of the counsel for the complainant is hereby declined.”

7. The submission of the petitioner is that the complainant has on his own showing demonstrated that the petitioner here is not the person to whom the summons should be sent and that someone else is in fact the proprietor of M/s. Right Channel Resources. Clearly the cheque was not signed by the petitioner here and considering the fact that the cheque was issued on behalf of the proprietorship concern, it was incumbent on the complainant to establish, prima facie, the identity of the accused. The petitioner was clearly not connected with the offence in any manner as is evident from the conduct of the complainant himself.

8. The evidence adduced by the complainant in the form of the affidavit of one Shri Ashok Chaudhary dated 14th August 2006 also appears to indicate that the proprietor of M/s. Right Channel Resources was Shri Harender Singh Pannu and that the petitioner was its “Senior Personnel”. Given that the entire case of the complainant was that the petitioner was the proprietor of the concern in question, which he plainly is not, the question of invoking Section 141(2) NI Act does not arise. This Court is unable to appreciate how the petitioner can in that capacity be made liable for the dishonoured cheque issued by the said concern.

9. This Court is satisfied that the complainant has been unable to show that the petitioner is even prima facie liable for the offence under Section 138 NI Act.

10. Accordingly, this petition is allowed and the petitioner is hereby discharged in Criminal Complaint No. 521/01 titled as *M/s. B.K. Embroidery v. M/s. Right Channel Resources & Anr.* pending in the court of the learned MM, New Delhi.

11. The trial court record be sent back immediately to the concerned learned MM along with a certified copy of this order within five days from today.

S. MURALIDHAR, J.

August 8, 2008

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