

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Crl.M.C. Nos. 2570/2007, 2573/2007 & 2709/2007

*

Judgment Delivered on: July 07, 2008

Amit Dua

....Petitioner

Through: Mr. Sandeep Gupta, Adv.

Versus

Shri Jamil Ahmad

...Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the reporters of local papers may
be allowed to see the judgment? yes
2. Whether the judgment be referred to the
reporter or not? yes
3. Whether the judgment should be reported
in the digest? yes

Kailash Gambhir, J (Oral)

This order shall dispose of all the three petitions bearing nos. Crl. M.C. No. 2570/2007 2573/2007 and Crl. M.C. No. 2709/2007 filed by the same petitioner.

By way of the present petitions moved under Section 482 Cr. P.C., the petitioner seeks quashing of criminal proceedings and setting aside of order dated 1.8.2007 passed by the Court of Shri Vipin Kumar Rai, learned M.M., Karkardooma, Delhi in C.C. Nos. 2237/1, 2238/1 and 2239/1 taking cognizance of offence punishable under Section 138, N.I. Act, PS Kalyanpuri, Delhi.

The brief facts common in these petitions are that the respondent Jamil Ahmed filed three separate complaint cases against the present petitioner and two other persons namely, Shri Rajinder Singh and Shri S.K.

Nanda. It is alleged in the complaint filed by him that all the accused persons including the present petitioner used to purchase fresh fish on credit basis with an assurance that they will pay the credit amount within a period of 15 days against the credit balance of Rs.26,21,710/-. One of the accused Shri Rajinder Singh issued and signed the cheques and on the deposit of the said cheques they were returned by the banker of the said accused with remarks 'insufficient fund'. A legal notice was sent by the complainant /respondent and on the failure of the said accused to come forward to pay the amount within a stipulated period of 15 days, complaint Case nos.2237/01, 2238/01 and 2239/1 were filed by the complainant Jamil Ahmed on the allegation of non- payment and dishonored of cheques.

In complaint case No. 2239/1 the dishonor of cheques bearing nos. 251108, 241230, 241233 dated

10.8.02, 27.9.02 and 7.10.02, for Rs.70,000/-, Rs.20,000/- and Rs.20,000/- respectively are involved while in complaint case no. 2238/1 the dishonor of cheques bearing nos. 234450, 234449 dated 25.9.2002 and 28.9.2002 for Rs.50,000/- and Rs.25,000/- respectively and in complaint case no. 2237/1 the dishonor of cheque bearing no. 334447 dated 20.9.2002 for Rs.50,000/- form basis of these complaint cases.

Mr. Jamil Ahmed is present in the Court. He states that the present petitioner has been wrongly impleaded by him in the said complaint cases and he wants to continue with the complaint cases filed by him only against Mr. Rajinder Singh, who issued and signed the said cheques.

Counsel for the petitioner urged that in the complaint cases filed by the respondent, no role has been assigned to the petitioner and no foundation was

laid so as to show involvement of the petitioner by the respondent in all the three complaint cases filed by the respondent. Counsel for the petitioner also submits that no legal notice as mandatory under the provisions of Section 138 (b) of Negotiable Instrument Act was sent by the complainant/respondent to the petitioner and therefore, no demand whatsoever was raised by the complainant respondent as against the present petitioner.

Counsel for the petitioner further submits that very vaguely in the complaint the complainant respondent alleged that all the accused persons used to purchase fresh fish on credit basis and the amount in question with respect to the said dishonoured cheques was outstanding against them. The contention of the counsel for the petitioner is that the allegations made by the complainant are so unspecific, indefinite and vague

to be taken cognizance of for initiating proceedings under Section 138 of Negotiable Instruments Act. In support of his arguments, counsel for the petitioner placed reliance on the judgment of the Supreme Court in **S.M.S. Pharmaceuticals Ltd. Vs. Neeeta Bhalla & Anr., IV (2005) CCR 12 (SC)** and judgment of this Court in **Anil Kumar Vs. State & Anr. 137 (2007) DLT 10.**

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

All the three complaints were filed by Mr. Jamil Ahmed against Mr. Rajinder Singh, Mr. Amit Dua and Mr. S.K. Nanda. In the said three complaint cases except a bald averment attributing purchase of fresh fish on credit basis, no other allegation has been made against the present petitioner with regard to the issuance of said cheques in question or to show any

liability of the present petitioner for the said debt against which cheques were issued by Mr. Rajinder Singh. Perusal of these complaints would further reveal that all the three complaints are based on the cheques issued and signed by Mr. Rajinder Singh alone, in whose account the funds were found insufficient to honour the amount of the cheques. Even the legal notice was not served upon the petitioner and the same was only directed to Mr. Rajinder Singh.

In **S.M.S. Pharmaceutical's case (Supra)**, the Supreme Court has clearly held that the criminal liability under Section 138 of the Negotiable Instruments Act can be fastened only against those who at the time of the commission of the offence were in-charge and responsible to the company for the conduct of their business. Indisputably, the main responsibility is on the complainant to level sufficient allegations and to lay

foundation in the complainant so as to show as to how the accused persons are responsible and liable to pay the amount of the dishonored cheques.

It is settled legal position that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint and he is only to be prima facie satisfied whether there exists sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion on merits or demerits of the case at the stage of issuing process. However, in a case where allegations made in the complaint or the statement of witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not prima facie disclose fulfillment of the basic and essential ingredients of an offence alleged to have been committed by the accused, the concerned

Magistrate in its discretion can decline issuing process under Section 204 of the Code of Criminal Procedure.

Perusal of all these complaints clearly show that no such foundation was laid by the complainant so as to implicate the present petitioner. Mere bald statement unsupported by any other averment and documentary evidence alleging purchase of fresh fish on credit basis by the petitioner and other persons will not be suffice for taking cognizance of a complaint under Section 138 of the Negotiable Instruments Act. The decision of this court in **Anil Kumar's case (Supra)** also supports the said proposition.

In the backdrop of the aforesaid discussion, the three complaint bearing nos. 2237/01, 2238/01 and 2239/1 and consequential proceedings arising from the said complaint cases are quashed qua the petitioner.

However, the said complaint cases will continue against the other persons.

July 07, 2008
mg

KAILASH GAMBHIR, J