

IN THE HIGH COURT OF DELHI

Crl.M.C. No.3913/2008 & Crl.M.A. No.14585/2008

Date of decision: 30th July, 2009

Mr. M. Abdul Haque & Ors. Petitioners
through: Mr. S. Nanda Kumar, Adv. with
Mr. Satish Kumar, Adv.

VERSUS

M/s Birla Yamaha Limited ...Respondent
through: Mr. Virender Ganda, Adv. with
Mr. S.K. Giri, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

1. Whether reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

GITA MITTAL, J(Oral)

1. The present petition has been filed by Mr. M. Abdul Haque, petitioner no.1 who is husband of Mrs. Zulnar Haque who has been arrayed as respondent no.2. The petitioners have submitted that in the year 1994, Mrs. Zulnar Haque and one Mr. P. Mohankrishnan started a business in the name and style of M/s Universal Engineering Company. This concern remained an unregistered partnership which was engaged in the business of canvassing and booking orders on behalf of M/s Birla Yamaha Limited and stocking Birla Yamaha Portable Generators manufactured by the respondent/complainant company.

2. So far as the petitioner no.1 is concerned, he has nothing to do with the business and affairs of M/s Universal Engineering Company.

3. On account of disputes between the respondent/complainant and two partners of M/s Universal Engineering Company, meetings were held on 12th & 13th February, 1998 between the representatives of the respondent company and M/s Universal Engineering Company. Minutes were drawn up in these meetings. The petitioners have submitted that in these meetings, Mr. P. Mohankrishnan agreed to pay the outstanding amount of Rs.9,82,765/- to the respondent/complainant by way of cheques bearing nos.332611 to 332620 drawn on his personal account in the Dhanalakshmi Bank at Coimbatore in Tamil Nadu. As per the minutes, in case of any default by Mr. P. Mohankrishnan in making the payment, the respondent/complainant reserved its right to take immediate legal action for the recovery of the amount from Mr. P. Mohankrishnan.

4. It is the petitioner's case before this court that these minutes acknowledge that the liability to pay the respondent/complainant was that of and remained with Mr. P. Mohankrishnan, a partner of M/s Universal Engineering Company alone. The liability was in his individual capacity

which is manifested from the fact that he issued ten cheques from his personal account in favour of the respondent/complainant.

5. It appears that the cheques were dishonoured on presentation for the reason that the account stood closed. The respondent/complainant consequently filed four complaint cases being C.C. Nos.705/04/2004; 708/04/2004; 6224/1/04 & 10982/04 against M/s Universal Engineering Company through Mr. P. Mohankrishnan and also arrayed the present petitioners as respondents. These complaints were filed in the Patiala House courts under Section 138 of the Negotiable Instruments Act.

6. The petitioners have contended that when they learnt about the filing of the Complaint Case no.705/04/2004 and Complaint Case no.708/04/2004 before the court of the Metropolitan Magistrate, Patiala House Courts, New Delhi, they challenged the filing of these complaints by way of Crl.Misc.(Main) No.2235 of 2007 entitled Mr. M. Abdul Haque & Ors. Vs. M/s Birla Yamaha Limited and sought quashing of the proceedings therein inter alia on the ground that the cheques in question were issued by Mr. P. Mohankrishnan in favour of M/s Birla Yamaha Limited- respondent/complainant from the personal saving bank account maintained by him with the Dhanalakshmi Bank, Coimbatore, Tamil Nadu in

order to discharge his personal debt which was accepted by the respondent/complainant as recorded in the minutes dated 13th February, 1998. It was urged by these petitioners that they have been wrongly arrayed as accused persons in the complaint cases.

7. The petitioners also subsequently learnt that another case being Complaint Case No.6224/1/04 was filed by the respondent company in respect of some of other cheques in the series which was also pending before the learned trial court in Patiala House, New Delhi. The proceedings in this complaint were assailed by way of Criminal Miscellaneous (Main) No.1399/2008 before this court when the petitioner sought quashing of those proceedings on the same grounds as were raised in Crl.Misc. (Main) No.2235/2007.

8. Learned counsel for the petitioners has placed before this court a copy of the judgment of this court dated 3rd November, 2008 passed in the two petitions, accepting the contentions of the petitioners and quashing the proceedings in the Complaint Cases Nos.705/4/2004, 708/4/2004 & 6224/1/04 filed under Section 138 of the Negotiable Instruments Act.

9. Pursuant to the judgment passed by this court, the petitioners have been discharged by the learned

Metropolitan Magistrate by an order passed on 24th November, 2008 in Complaint Case No.6224/1/04.

10. The present petition has been filed for the reason that the petitioners have learnt about the fourth complaint case being Complaint Case No.10982/2004 filed by the respondent/complainant under Section 138 of the Negotiable Instrument Act against M/s Universal Engineering Company, Mr. P. Mohankrishnan and against both the petitioners herein in respect of the same aforenoticed transactions. In this complaint also the present petitioners have been arrayed as accused persons. The complaint has been filed on account of dishonouring of the Cheque No.332612 for the sum of Rs.5,26,191/- and the cheque no.332613 for the amount of Rs.6,00,000/- issued by Mr. P. Mohan Krishnan out of his personal account to discharge the liability for which he alone was responsible.

11. The petitioners assail the proceedings in this case on grounds which are identical to the grounds which were urged in Crl.Misc.(Main) Nos.2235/2007 and 1399/2008. It is further urged that the respondent accepted the position that only Mr. P. Mohankrishnan was liable for amounts for which he had issued the cheques in question which were dishonoured by his bankers. It is further urged that in any case, the petitioner no.1 is only the husband of petitioner

no.2 and had no concern at all with the business which was being conducted by the petitioner no.2 with Mr. P. Mohankrishnan. The further submission is that in any case, the issues urged by the petitioners have been fully considered by this court in the judgment dated 3rd November, 2008 whereby CrI.Misc. (Main) Nos.2235/2007 and 1399/2008 were allowed. This judgment has attained finality and binds adjudication in the present case inasmuch as the present case relates to two cheques out of the same series and identical questions.

12. So far as the judgment dated 3rd of November, 2008 is concerned, the findings of the court which would guide and bind adjudication in the present case deserve to be considered in extenso and read thus:-

“10. In the case at hand, the cheque has been issued from the personal account and in the personal capacity by one of the partners of the partnership firm, Mr. P. Mohanakrishnan. Where the Cheques in question are issued by a person in his individual capacity and not as partner of any firm, the firm is not an accused in this case anymore, and the remaining partners other than the said person cannot be summoned to stand trial as persons responsible to the firm for conduct of its business.

Unlike in the case of a cheque drawn by a person in his individual capacity, in the case of cheque drawn by a person in charge of and responsible to the firm, criminal liability is fastened not only as the de facto drawer of the cheque but also on the firm as well as any partner, manager secretary or other officer of the firm, provided

that such person is guilty of act or omission referred to in Section 141(2) of the Act. What then emerges is that in a case where the offence is committed by a firm, the criminal liability is not confined to the signatory of the cheque alone but also to non-signatories also provided the other conditions in the regard are satisfied. In other words, in a case of this nature it may not be permissible to draw a distinction between signatories and non-signatories qua the cheque in question.

11. A similar issue came up before this court in **Srikant Soman and Ors. Vs. Sharad Gupta and Anr.- 119(2005)DLT616**, wherein it was observed as under:

“7. The respondents say that the cheques were issued on behalf of the accused. This certainly has no relevance for an offence under Section 138 of the Negotiable Instrument Act. The offence is committed by the person who issues the cheques and not the person on whose behalf the cheque is issued unless, however, the person on whose behalf the cheque is issued is a company or a partnership firm. Even if it is presumed that the account from which the cheque was issued was held jointly by petitioner No.1 and any other petitioner, no petitioner other than petitioner No.1 can become liable for the offence. Section 138 makes it very clear that only the person who draws the cheque is liable for the offence. Vicarious liability is available only in respect of those offences committed by a company as provided in Section 141 of the Negotiable Instrument Act. The petitioners other than petitioner No.1 are neither the persons who drew the cheques nor the persons who can become liable by virtue of Section 141 of the

Negotiable Instrument Act. Thus only the petitioner No.1 becomes liable for the offence and he alone can be summoned. The petitioners, other than petitioner No.1, could not have been summoned by the trial court."

12. On the basis of the above discussion, I feel that the present petitioners have been wrongly arraigned as a party, therefore, the petition is allowed and the complaint case bearing nos. 705/4/2004 and 708/4/2004 in Crl. M.C. No. 2235/2007 and complaint case No. 6224/1/04 in Crl. M.C. No. 1399/2008 filed by the respondent under S. 138 N.I. Act and proceedings arising therefrom are hereby quashed qua the petitioners. It is, however, made clear that this order shall have no affect as far as pendency of the said complaint cases are concerned as against the other respondents.

13. With the above directions both the petitions are disposed of."

13. It is not disputed that the cheque Nos.332612 & 332613 concerned in the present case were part of the same series and the transaction which was before the court in Crl.M.C. No.2235/2007 and 1399/2008. All cheques were issued by the same person in identical circumstances. Nothing is pointed out which would persuade a different view in the present matter.

14. In view of the findings returned in judgment dated 3rd November, 2008, it has to be held that so far as the present case is concerned also, the petitioners have no liability so far as the dishonouring of the cheque is concerned and the

petitioners have been wrongly arraigned as persons accused in Complaint Case Nos.705/04/2004; 708/04/2004; 6224/1/04 & 10982/04.

Accordingly, the proceedings against them are hereby quashed.

It is made clear that the present order shall have no effect so far as the pendency of Complaint Case No.10982 of 2004 against the other respondents is concerned.

July 30, 2009
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Gita Mittal, J.