

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 16th September, 2011
Judgment Pronounced on: 30th September, 2011

+ CRL.M.C.1659/2010

S.V.ARUMUGAM Petitioner
Through: Mr.Madhukar Pandey, Advocate
and Mr.Vivek Jain, Advocate

versus

STATE & ANR. ...Respondents
Through: Mr.Pawan Sharma, Standing
Counsel (Crl.) for State/R-1
Mr.Ashok Kripalani, Respondent
No.2 in person

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

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

PRADEEP NANDRAJOG, J.

1. The present petition, filed under Section 482 of the Code of Criminal Procedure 1973, seeks quashing of complaint No.1323/1/2006 filed by respondent No.2 impleading a private limited company, its Managing Director i.e. the petitioner and its Manager (Legal) as the accused and the order dated 02.09.2009 passed by the learned Metropolitan Magistrate summoning the petitioner to face

trial for the offences punishable under Sections 409/420/467/471 read with Section 120B IPC is also challenged.

2. In a nutshell, the relevant facts are that petitioner S.V.Arumugam is admittedly the Managing Director of the company Shiva Texyarn Limited (formerly known as Annamalai Finance Limited), incorporated under the Indian Companies Act 1956 and engaged in the business of finance.

3. On 04.04.1995 Annamalai Finance Limited (hereinafter referred to as the 'Annamalai Company') sanctioned a loan in sum of ₹6,00,000/- to M/s.Ashok Kriplani & Co., a proprietorship concern of respondent No.2 Ashok Kriplani i.e. the complainant, and disbursed the said sum in three installments in sum of ₹2,00,000/- each to the respondent No.2 on 04.04.1995, 12.06.1995 and 26.04.1995 respectively. In order to secure repayment of said loan, by way of security, the respondent No.2 pledged certain shares belonging to him. The respondent No.2 also mortgaged the first floor of property bearing Municipal No.10/18, Old Rajinder Nagar, New Delhi by depositing the title deed of the said property vide Memorandum of Deposit of Title Deeds dated 26.04.1995 and on 27.04.1995 i.e. the next date wrote a letter in acknowledgement of the mortgage. A loan agreement dated 04.04.1995 styled as 'Agreement cum Pledge' was executed between Annamalai Company and the respondent No.2, the relevant terms whereof read as under:-

“

Whereas the Borrower has requested the company to sanction the loan of ₹6,00,000. And whereas the Company has agreed the said loan amount upon the following terms and conditions:-

The loan amount shall be ₹6,00,000. This facility would depend upon the value of the securities from time to time. The valuation of the securities, margin money and actual loan facility would be exclusive decisions of the company and will be binding upon the parties.

This loan is repayable unconditionally on demand at the Company's absolute discretion. The Company would give seven days written notice to the borrower to repay the amount due.

Without prejudice to the provisions of clause (1) this facility may be available for the period of months/days only and the loan shall carry the interest at 36% p.a.

In consideration of the said loan facility the original securities mentioned in the schedule attached to this agreement are hereby pledged in favor of the company as an exclusive charge to the company towards repayment of the principal amount interest, cost and other charges etc. due to the company under the said loan amount.

If at any time the value of the said securities falls so as to create a deficiency in the margin requirement specified by the company from time to time, or the borrower shall within seven days of notice from the company deposit with the company additional security in the form of cash or such other securities which may be acceptable to the company failing which the company may at its discretion sell dispose off or realize any or all of the other securities without

being liable for any loss or damage or diminution in value sustained thereby.

In case of expiry of the term or in case of any of the events happening as stated herein before, the company would have the full rights to sell, dispose off or realize the said securities on such terms and for such price that the company thinks fit and apply the net proceeds towards the satisfaction of the balance outstanding in the overdue account including charges, expenses etc.

....." (*Emphasis Supplied*)

4. Simultaneous with the execution of the loan agreement, the respondent No.2 executed a power of attorney dated 04.04.1995 in favour of Annamalai Company authorizing the Company to deal with the shares pledged by him in any manner whatsoever. The respondent No.2 executed three promissory notes dated 04.04.1995, 12.06.1995 and 26.04.1995 wherein he undertook to return the sum of ₹2,00,000/- together with interest @ 26.78% per annum to Annamalai Company. It be highlighted that each promissory note was in sum of ₹2,00,000/-.

5. As per the agreement the loan had to be returned with interest after one year. The respondent No.2 failed to repay the loan on the expiry of the term of the loan. When Annamalai Company demanded repayment of the loan from the respondent No.2 he requested the company to grant him some time, which request was acceded to by the company.

6. Sometime in the year 1996, the respondent No.2 handed over an undated blank cheque to Annamalai Company towards repayment of loan. After filling the date 28.3.1997 and the amount of ₹9,99,301/- respectively, Annamalai Company deposited the said cheque for encashment with its banker which sent the cheque to the drawee bank and the cheque was dishonoured and in respect whereof the company instituted a complaint against the respondent No.2 for having committed an offence punishable under Section 138 of the NI Act.

7. During the pendency of the aforesaid complaint, parties negotiated and on 23.01.1999 and 27.03.1999 the respondent No.2 paid sums of ₹50,000/- and ₹5,000/- to Annamalai Company towards repayment of the loan amount. On 17.02.1999 the respondent No.2 wrote a letter to Annamalai Company requesting the Company not to sell the shares pledged by him for next 2-3 months, which request was acceded to by the Company. On 30.03.1999 the respondent No.2 wrote another letter to Annamalai Company stating therein that the Company should sell the shares pledged by him in the near future. Thereafter on 29.05.1999, 04.06.1999 and 02.07.1999 Annamalai Company sold the shares pledged by the respondent No.2 and adjusted the amount in the loan account of respondent No.2 and even after adjustment claimed balance amount due.

8. Thereafter in the year 2001 the respondent No.2 filed a complaint under Section 17 of the Consumer Protection

Act, 1986 against Annamalai Company before State Consumer Dispute Redressal Commission (hereinafter referred to as the "State Commission") inter-alia alleging that there was deficiency in the services provided to him by Annamalai Company inasmuch as with mala-fide intent the company sold the shares pledged by him at a very low price and without prior notice to him.

9. In the year 2002 the respondent No.2 made a complaint to the Station House Officer PS Rajender Nagar, against the company and the petitioner in which the relevant portions read as under:-

"1. That Annamalai extended me a loan of ₹6/- lakhs (Rupees Six Lakhs only) in year 1995-96 against equity shares, for a period of one year i.e. upto 31st March, 1996. I offered my office flat also as collateral security. As per agreement cum pledge dt.26/4/95 executed between myself and Annamalai which explicitly included a clause that the latter had the power & authority to dispose off the shares in case their value fell below the loan amount plus interest, after giving 7-days notice to me or on the expiry of one year from the day of grant of loan whichever was earlier but Annamalai miserably failed to perform their part of duty for the reason to extract more and more interest from me. It may be stated that had Annamalai had disposed off the shares as per the said clause the entire loan amount could have been adjusted against the sale proceeds of the shares held by the Annamalai, **but no concrete action was taken by Annamalai as per agreement.**

2. Acting differently, **Annamalai interpolated one of cheques** (given for interest purpose) & filed a complaint suit in the year 1997 under section 138 of N.I. Act, at Coimbatore, which

however has been transferred to Hon'ble Patiala House Court by order of Hon'ble Supreme Court & is now pending for discharge before Hon'ble High Court of Delhi.

3. In the year 199, by virtue of the above complaint suit, Annamalai by force got transfer deeds of shares pledged, signed from me, though I specifically told them to not to sell the shares in the market without my permission. I even offered Annamalai my office flat worth ₹15/- lakhs at that time to be adjusted against loan a/c and categorically told them though I was not finding buyers for office flat but I would wait for the shares to be sold in the market as at that time value of shares was lying low. But anyway, **Annamalai was not supposed to be anybody to pressurize me in any way since they failed to act as per our agreement and secondly as their complaint suit was pending in the court of law.**

4. a) **Annamalai went on to breach Contract Act 1872 and sold my shares without giving me notice, a mandatory requirement as per our agreement & as per Contract Act 1872.** Annamalai informed me of sale of shares vide letter dated 26/8/99.

b) To the best of my knowledge Annamalai went one step further & sold 500 shares of Hindustan Oil Exploration having share certificate nos.31725, 38893, 26972, 166526, 74901 by forging the signatures of these share holders as the original deeds of these shares expired way back in 1997.

c) Not only that, Annamalai got most of NRI shares transferred in their name without RBI approval, for which a complaint is already pending with enforcement directorate, New Delhi.

5. As such the Directors of Annamalai at their Coimbatore office and the Branch Manager at

their Delhi office have committed an offence of breach of trust punishable u/s 406 IPC & forgery etc. punishable u/s 420 & other appropriate section of IPC.

....”

10. In the complaint filed by respondent No.2 before the State Consumer Disputes Redressal Commission, the company took a stand that the transaction between the parties was pursuant to a contract and that it had acted as per the contract and that there was no deficiency in service. It was also pleaded, in the alternative, that highly disputed questions of fact arose for consideration and that under the summary jurisdiction the Commission should not adjudicate thereupon.

11. Vide order dated 21.08.2006 the State Commission dismissed the complaint filed by the respondent No.2 under the Consumer Protection Act and the relevant portions of the order read as under:-

“1. On the allegations that the OP had not only transferred the shares of the Complainant but also sold them illegally and without giving notice towards recovery of the loan, the Complainant has sought compensation of ₹18,03,025.67 with interest @ 18% and ₹20,000/- by way of cost.

X X X

7. That the Complainant has suffered a loss of ₹18,03,025.67 due to the negligence and deficiency in service of OP due to their selling of the shares of the Complainant at an inappropriate time and without giving notice to the Complainant about the intent, as it is mandatory as stated above and failure on part of

the OP to sell the remaining shares at recommended time. Had the OP given notice to the Complainant about sale of shares the Complainant instead would have sold the office property worth ₹13-14 lakhs than the shares and would have cleared the loan amount plus accrued interest in one stroke. Hence this Complaint.

X X X

10. Aforesaid rival claims and conspectus of facts clearly show that there was no violation of the contract between the parties. OP-Bank had given a loan to the Complainant against the pledge of shares. On having received the cheque of ₹9,99,301/- towards repayment of the loan the OP presented the same for clearance but it was dishonored due to insufficiency of funds. Though the Complainant alleged that this was a forged cheque yet we find it difficult to accept it as no evidence was produced in that regard. Rather the Complainant has stated that in spite of the fact that he had withdrawn the cheque, the OP presented the same for encashment.

11. Let us assume that cheque was not a correct cheque or duly signed by the Complainant still the fact remains that the Complainant vide his letter dated 17.12.1999 had requested the OP not to sell the shares for another 2-3 months. OP duly accepted his request and withheld the shares for more than three months. OP duly accepted his request and withheld the shares for more than three months. The first sale was made on 29.05.1999 whereas the subsequent sales were made on 04.06.1999 and 02.07.1999.

12. The contention of the Complainant that before selling the security the OP Bank was required to give a notice does not hold water as the OP-Bank had already shown generosity by not selling the shares for 2/3 months.

X X X

14. The facts in the instant case are altogether on different footing than the facts involved in the judgments cited above. Deficiency in service in such cases has to be proved in respect of nature, manner and performance which were required to be maintained or performed by person in pursuance of a contract. OP cannot be held guilty for violation or breach of any of the loan terms.

15. There is no merit in the Complaint and the same is dismissed. *(Emphasis Supplied)*

12. Aggrieved by the order dated 21.08.2006 the respondent No.2 filed an appeal under Section 23 of the Consumer Protection Act, 1986 before the National Consumer Dispute Redressal Commission (hereinafter referred to as the "National Commission", which appeal was dismissed vide order dated 19.10.2006 on the ground that the respondent No.2 is not a "consumer" within the meaning of the Consumer Protection Act 1986.

13. Vide judgment dated 05.03.2007, the learned Metropolitan Magistrate dismissed complaint filed by the company against respondent No.2 alleging said respondent having committed an offence punishable under Section 138 of the NI Act and the relevant portion of the order reads as under:-

"34. I have gone through all the judgments filed by both the parties and have also given careful consideration to the submissions made by them. According to me, the distinguishing feature in the present case, is that the cheque in dispute issued by the accused is admittedly, an incomplete negotiable instrument. No doubt

under Section 20 NI Act, the complainant was within its right to complete the same before its presentation, however the date and amount that could have been filled up in the cheque was to have been agreed to, between the parties expressly or impliedly. The contention of the accused is that he did not give any authority, express or implied, to the complainant to fill up the date of 28.03.97 and the amount of ₹9,99,301/- in the cheque.....According to me, accused is rightly contending that as on 28.03.97 the complainant had no authority to fill up a cheque given in February 96, as a reasonable period has elapsed thereafter.....

35. Now coming to the amount that has been filled up in the cheque, according to Ld. Counsel for complainant the accused had executed three promissory notes Ex.DE1/A to 1/C, in favor of the complainant, expressly agreeing therein to pay interest @ 26.78% on the principal amount and therefore the amount of ₹9,99,301/- was filled up in the cheque after calculating the interest @ 26.78% p.a. on the principal amount. As discussed herein above accused has taken a contention that the promissory notes have been materially altered by the complainant as the date and the rate of interest were inserted in the promissory notes after their execution.....In other words the only inference that can be drawn from the cross examination and the admission and denial carried out by this witness is that, the date of promissory notes and the rate of interest in the promissory notes by the complainant on its own after their execution.

X X X

37. I am unable to accept the contention of the Ld. Counsel for complainant that as per agreement Ex.DE-1/D or as per the prevalent practices the complainant had the absolute right to decide the rates of interest unilaterally and fill up the same in the promissory notes without

even informing the accused about the same. The fact that the accused has not also been able to prove that the rate of interest agreed was 22% p.a. and not 26.78%, does not ipso facto imply that the complainant's assertion that it was 26.78% p.a. without any proof in support thereof is to be accepted.

38. Therefore in my considered opinion the complainant has failed to prove that the amount of ₹9,99,301/- was filled up in the cheque with the consent of the accused. (*Emphasis Supplied*)”

14. Aggrieved by the judgment dated 05.03.2007 passed by the learned Magistrate, Annamalai Company filed a petition under Section 378 Cr.P.C. seeking leave to file appeal against said judgment before this Court. Vide order dated 13.10.2009, this Court granted leave as prayed for. The appeal is still pending adjudication.

15. Thereafter in the year 2008 the Company filed a suit against respondent No.2 praying for a decree pertaining to the amount claimed by the company as outstanding under the loan agreement. In the written statement filed by respondent No.2, pertaining to the loan agreement/agreement cum pledge dated 04.04.1995 entered into between the parties, he pleaded as under:-

“(v) That in reply to Para 6(v) pertaining to Agreement-cum-pledge letter dated 4.4.1995 for ₹6,00,000/- is not admissible in law, as firstly it is not a letter but is a agreement-cum-pledge documents, secondly on 4.4.1995, the date of execution of the agreement-cum-pledge documents only ₹2.00 lakhs were advanced as loan and not ₹6.00 lakhs, as contended by the

Plaintiff Company, thirdly the said document also envisages selling/disposal of and realizing the proceeds of the securities in the event of loan amount not settled, which ought to have been resorted to immediately on expiry of one year from the date of advancement of loan to the Defendant No.2 or as stipulated, which was not done. Above all the said agreement-cum-pledge has only been signed by the Defendant No.2 whereas the document is amongst three parties and has not at all been properly executed, as firstly the Plaintiff Company has not signed and secondly the name and address of the guarantors have not been shown in the agreement-cum-pledge document. As such the said agreement-cum-pledge documents annexed with the Plea and even irrevocable power of attorney are not admissible in law, as they are void ab-initio."

16. The respondent No.2 filed the complaint No.1323/1/2006 under Section 200 Cr.P.C. against the accused as noted in para 1 hereinabove, in which complaint respondent No.2 has pleaded as under:-

"The accused filed a Complaint in Coimbatore Courts against the Complainant on account of bounced cheque. Since the Complainant was forced to close his business in later part of year 1996 because of mounting losses, and left Delhi for bread and butter, he was deliberately not summoned till June 1999, when he was served of summons by the personnel of the accused Company at their Delhi office without mandatory copy of the Complaint. The said Complaint case was however transferred by the Hon'ble Supreme Court of India to this Hon'ble Court on the transfer application of the Complainant, vide its order dated 19.01.2001.

5. That, the Complainant afraid of unknown, in absence of copy of Complaint case, was forced

(i) to sign the transfer deeds of the pledged shares with a promise that the accused shall not be transferring and nor selling the shares and (ii) to gag out a sum of ₹55,000/- on the promise that the Complaint case not be pursued. This extraction by force took place in early 1999.

But the accused did not keep the promise and not only he kept on whipping the Complainant with the Complaint case but also transferred the shares in its name and sold almost all the shares without any specific permission from the Complainant on such illegal transfer and sale violating the mandatory, specific and express provisions of the Section 176 of Contract Act.

X X X

7. MALPRACTICE OF THE ACCUSED: That, the following instruments and documents as used by the accused in the transaction are forged:

(a) All the three promissory notes are forged. As per the bank statement of the Complainant the loan was taken on 04.04.1995, 16.04.1995 and on 04.05.1995 of ₹2/- lakhs each totaling to ₹6/- lakhs, but the promissory notes which were blank dated at the time of the execution except that of 04.04.1995 have been filled by the accused, Manager (Legal) at the instructions of his M.D. as of dated 12.04.1995 and 26.04.1995 respectively to earn extra interest.

(b) Since the rate of interest was being negotiated during execution of the promissory notes, the rate of interest column was left blank at the time of execution of the promissory notes which has been filled by the accused @26.78% p.a. without any written consent of the Complainant. The interest rate shown in yet another forged and manipulated document of agreement cum pledge is 36% p.a. So, nonetheless the blank column of the promissory notes is filled by materially altered interest rate

violating the provisions of S 80 of N.I. Act. The interest was negotiated orally immediately after availing of loan so that of @ 22% p.a. as the interest rates were falling as demonstrated above.

All the three promissory notes, to the best of the knowledge of the Complainant are written, wherever required and attested post facto by one Mr.R. Paramsivam, Manager (Legal) of accused Company, at Coimbatore, at the instance of the Managing Director of the accused Company.

Further the promissory note dated 12.04.1995, has forged date under the signature of the Complainant, forged by the accused to reaffirm the date on the title of the note.

Thus, on above said grounds the said promissory notes of deed 04.04.1995, 12.04.1995 and of 26.04.1995, are forged and thus void.

(b) That, the cheque No.488497 issued blank in February 1996 to the accused, as to date and amount for security or for outstanding interest purposes to be filled after the renegotiations of interest rate, was misused by the accused on 28.03.1997 and he has filled more than the outstanding balance as per even his calculations as alleged by him in the Complaint case u/s 138 of NI Act.

X X X

Thus on the above said grounds the cheque No.488497 issued on Oriental Bank of Commerce may be declared as forged and thus void.

(c) That, the agreement cum pledge as submitted by the Plaintiff is manipulated/materially altered/forged as demonstrated below:

i) That, the Stamp paper on which the said agreement is executed in year 1995, is purchased in the year 1992, in the name of the accused and is between the three parties but is signed solely by the Complainant only.

ii) That the rate of interest is shown in the said agreement as @ 36% p.a. against 26.78% as shown in a promissory note even of the same date i.e. 04.04.1995.

iii) That, figure of 1, 4 and 6 as shown in the date and interest rate of the said agreement differs from the same corresponding figures as shown in the pin code of the city of Coimbatore. The figure of 6 is different in the rate of interest, in the said pin code and in the amount of loan of ₹6,00,000/-.

Thus the said agreement cum pledge as submitted by the accused in his support in a civil case is manipulated/materially altered and illegal which is liable to be declared as forged.

d) That the power of attorney is also manipulated to include as it is also made in 1995 on the stamp paper of the year 1992 purchased in the name of the accused, having various figures typed differently from each other, and is having different business address of the Complainant.

e) That, it is sheer guts of the accused for having forged the covering documents of Memorandum of Deposit of Title Deeds of the property and Link Letter Towards Finance Extended, more so when the accused is a part of ₹500 crore strong group Company.

The said documents are forged to the hilt as the signature of the Complainant has been forged as also the business address of the Complainant is wrongly mentioned, which was 10/18, 1st Floor, Old Rajinder Nagar, New Delhi – 110 060; the description of the pledged property mentioned is

wrong; as also the details mentioned of the promissory notes is wrong as demonstrated at (a) above of this para.

8. That, by such acts of the accused, the accused persons in fact wanted to grab all the assets of the Complainant and nothing less, though they may have changed their mind by their subsequent acts when they have been countered by the Complainant on their illegalities in various courts of law. They thus are guilty of offences of breach of trust, cheating, forgery of valuable security, falsification of account of the Defendant etc, breach of trust on account of illegal transfer and sale of shares without notice to the Complainant, cheating and forgery on account of forging the negotiable instruments and papers of valuable security of immovable property of the Complainant.”

17. Recording pre-summoning evidence vide order dated 02.09.2009 the accused have been summoned to face trial.

18. As per the petitioner the complaint filed by respondent No.2 is a pressure tactic to harass the accused who are the creditors of respondent No.2 and that the nature of dispute between the parties is purely that of a civil nature. Per contra, respondent No.2 urges that the complaint prima facie shows offences as alleged committed by the accused and urges the Court that evidence cannot be gone into at this stage.

19. A perusal of the complaint in question shows that two sets of allegations have been leveled against the accused by respondent No.2; namely, (i) the accused illegally sold the shares pledged with the company by the respondent No.2 and thus committed the offences of cheating and

criminal breach of trust; and (ii) the accused forged various documents and used the said forged documents as genuine documents.

20. It is an admitted fact that Annamalai Company had advanced a sum of ₹6,00,000/- by way of loan to the respondent No.2 by handing over a cheque in the name of his sole proprietary firm and respondent No.2 had pledged certain shares in his name with Annamalai Company, by way of security to secure repayment of the said loan. It is further admitted that respondent No.2 failed to repay the said loan within the stipulated period and in view of the default of the respondent No.2 Annamalai Company sold the shares pledged with it. Here arises the dispute between the parties. Whereas respondent No.2 claims that Annamalai Company sold the shares without giving him notice as required by the loan agreement entered into between the parties and at a time when the price of the shares had plummeted to an all time low and not on the happening of the events specified in the loan agreement, the accused took the stand that the shares were not sold on the happening of the events specified in the loan agreement due to negotiations between the parties and when sold the same were after instructions from respondent No.2, which stand was accepted by the State Commission.

21. Though not binding, but since I find the reasoning to be correct, and for the reason I have extracted the reasons of the State Commission in para 11 above, which may be read as my reasons, it is quite apparent that the dispute

between the parties is of a purely civil nature and is sans any criminal intent.

22. In the decision reported as Dalip Kumar & Ors v Jagnar Singh & Ors (2009) 14 SCC 696 the Supreme Court had observed as under:-

“An offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute an offence of cheating.

9. The ingredients of Section 420 of the Penal Code are:

- “(i) Deception of any persons;
- (ii) Fraudulently or dishonestly inducing any person to deliver any property; or
- (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.”

10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405

of the Penal Code. (See *Ajay Mitra v. State of M.P.*¹)”

23. In the decision reported as *G. Sagar Suri v State of UP* (2000) 2 SCC 636 the Supreme Court observed as under:-

“Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”
(*Emphasis Supplied*)

24. The plea of forgery, as per the complaint lodged by respondent No.2, principally relates to the date and the amount filled up in the stated cheque issued by him as a blank cheque and the filling up of a date in the 3 promisory notes executed by him.

25. In said regard, Section 20 of the NI Act may be noted which reads as under:-

“20. Inchoate stamped instruments.—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby

gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount:

Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder."

26. Assuming that the respondent No.2 is right in contending that Annamalai Company filled up the amount and date in a blank cheque and three promissory notes issued by him in the favour of the company the same does not amounts to forgery in view of the provisions of Section 20 of the NI Act.

27. With respect to the allegations of forgery pertaining to other documents suffice would it be to note that the said allegations do not find a mention in the complaint dated 11.08.2002 lodged by respondent No.2 against Annamalai Company with the Station House Officer PS Rajender Nagar, which was the first complaint made by respondent No.2 against Annamalai Company. (See the relevant portion of the complaint dated 11.08.2002 noted in para 9 above). With respect to the loan agreement/agreement cum pledge, forgery whereof has been alleged by the respondent No.2 in the complaint in question, the stand taken by the respondent No.2 in the written statement filed by the

respondent No.2 in the suit for recovery filed by Annamalai Company is that said agreement is inadmissible in evidence and not that it is a forged document. There is not a whisper in the written statement that the said agreement is a forged document.

28. From the aforesaid, it is manifestly clear that the respondent No.2 is taking stands as per his convenience and it is a fit case where inherent powers should be exercised for the reason the complaint is ex facie mala fide and can be quashed on the last principle in the decision of the Supreme Court reported as 1992 Supply 1 SCC 335 State of Haryana Vs. Bhajan Lal wherein it was clearly held that a criminal complaint which is mala fide can be quashed.

29. The petition is allowed. Complaint Case No.1323/1/2006 and the proceedings emanating therefrom including the summoning order dated 02.09.2009 passed by the learned Metropolitan Magistrate are quashed.

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 30, 2011
mm