

*** HIGH COURT OF DELHI AT NEW DELHI**

+ CRL. M.C. No. 739/2011

Date of Decision : 09.04.2012

ICICI BANK

..... Petitioner

Through: Mr. Rajiv Nayyar, Sr. Adv.
with Mr. Madhav Khurana,
Adv.

Versus

STATE

..... Respondent

Through: Mr. Sunil Sharma, APP

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J. (Oral)

1. The present petition has been filed by the petitioner, ICICI Bank Ltd. under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the order dated 5.2.2011 passed in Complaint Case titled ICICI Bank -vs- Ved Pal pending in the Court of Tarun Chandiok [the then MM, Dwarka] and the proceedings emanating therefrom.
2. Briefly stated, the facts of the case are that the petitioner is a Public Limited Company, duly registered with the Registrar of Companies, having its office at Videocon Towers, IIInd Floor,

Block E1, Jhandewalan Extension, New Delhi and also at A-Block, Phelts Building, Connaught Place, New Delhi.

3. The petitioner company had advanced some loan to the accused, Ved Pal and in pursuance to the said loan, the accused had issued a cheque bearing No.142013 (Ex.CW1/B), dated 13.3.2008 for a sum of Rupees 14,946/- drawn on Allahabad Bank, Wazirpur Industrial Area, Delhi. It is alleged that the said cheque, on presentation, was dishonoured. It was received by the petitioner vide Cheque Return Memo dated 17.3.2008 (Ex.CW1/C) to the effect that funds in the account were not sufficient. The petitioner sent a Notice under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) and since the payment was not made within the statutory period permissible in law, the petitioner, through its authorized representative, came to file a complaint under Section 138 of the NI Act. After examining the pre-summoning evidence, the learned Magistrate issued notices to the accused, Ved Pal, however, the said notice was received back unserved with the report that Ved Pal had expired. On the basis of the Report that the accused Ved Pal had died and his bailable warrants were received back as unexecutable, the

learned Magistrate issued a contempt notice to the complainant, ICICI Bank Ltd. as well as to its Managing Director by observing that the factum of death of Ved Pal was in their knowledge and by filing a complaint under the NI Act on the basis of a cheque, purported to have been issued by a person who reportedly had died, much earlier than the date appearing on the face of the cheque, the petitioner had committed an offence of contempt of Court and they must show cause as to why they should not be proceeded under Contempt of Courts Act. It is against this impugned order that the petitioner and its Managing Director have come to the High Court in a petition under Section 482 of the Cr.P.C. assailing the order dated 5.2.2011.

4. I have heard the learned Senior Counsel for the petitioner, Mr. Rajiv Nayyar as well as Mr. Sunil Sharma, the learned APP. I have also gone through the record.
5. The main contention of Mr. Rajiv Nayyar is two-fold. The first submission of the learned Senior Counsel is that while entering into a loan agreement by the petitioner Bank with the accused, the latter had issued some post-dated cheques as EMIs with the amount duly filled-in to the petitioner Bank

for the purpose of realization of the loan amount on the dates appearing on the face of the cheque. It has been stated that it was in pursuance to these cheques having been issued, they were presented to the Bank of the respondent and the same were dishonoured. The petitioner, after complying with the processes of law as envisaged under Section 138 and 141 of the NI Act, had chosen to file a complaint against the accused. It has been contended that the petitioner company and its Managing Director had absolutely no knowledge about the death of the driver. They also did not have any method to find out as to whether the person who had issued the cheque purportedly was in existence or not. It is contended by him that they came to know about this fact only when non-bailable warrants were issued against the accused by the learned Trial Court which were received back with the report that the accused had unfortunately expired. It has been contended that merely because the Report on the notice or summons or the bailable warrants against the accused person had been received back with the noting that he had expired, it does not mean that the petitioner or its Managing Director are deemed to have committed any offence, much less an offence

punishable under the Contempt of Courts Act, 1971 so as to warrant issuance of the present Show Cause Notice under relevant Sections of the Contempt of Courts Act. It has been contended that on this ground itself, the impugned order passed by the learned Magistrate deserves to be set aside. The second ground, on the basis of which the petitioner has assailed the order passed by the learned Metropolitan Magistrate, is that the power to initiate criminal contempt against any accused person is with the Supreme Court and the High Court on its own motion as is provided under Section 15 of the Contempt of Courts Act, provided certain contingencies are met. It has also been contended that Section 2(c) of the Contempt of Court Act defines criminal contempt so as to read as under:-

“criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which---

- (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court; or
- (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or
- (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

6. It has been contended that merely because a cheque is purported to have been received by the petitioner company in discharge of its loan and the same, when presented to its Banker, was received back unserved, it could not be said that the petitioner was duty-bound to have found out as to whether the accused person was alive or not and only after such a verification, file the complaint. It has been contended that the power of criminal contempt invoked by the learned Metropolitan Magistrate is a gross abuse of the processes of law. In this regard, the learned senior counsel has drawn the attention of the Court to Sections 12 and 15 of the Contempt of Courts Act which read as under:-

12. Punishment for contempt of court.----(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation. --- An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in

excess of that specified in sub section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person.

Provided that nothing contained in this sub section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub section (4) where the contempt of court referred to therein has been committed by a company and it is provided that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation - For the purpose of sub sections (4) and (5),-

(a) "Company " means any body corporate and includes a firm or other association of individuals, and

(b) "Director" in relation to a firm, means a partner in the firm.

15. Cognizance of criminal contempt in other cases.--

(1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by-

- (a) the Advocate- General, or
- (b) any other person, with the consent in writing of the Advocate General, or
- (c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate- General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation.- In this section, the expression " Advocate-General" means,-

- (a) in relation to the Supreme Court, the Attorney- General or the Solicitor- General;
- (b) in relation to the High Court, the Advocate- General of the State or any of the States for which the High Court has been established;
- (c) in relation to the Court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

7. It has further been contended that the power to take cognizance for criminal contempt is either with the High Court or the Supreme Court and since the learned Trial Court is a subordinate Court, it could not have issued the contempt

notice to the petitioner to show cause as to why an action for criminal contempt be taken.

8. I have carefully considered the submissions made by the learned Senior Counsel. I find some merit in the submissions made by him. Section 2(c) defines criminal contempt so as to mean an act which scandalizes or tends to scandalize or lowers the authority of the Court or prejudices the judicial proceedings or interferes or tends to interfere or obstructs the administration of justice in any manner.
9. It has been contended that even a perusal of Section 15 of the Contempt of Courts Act will clearly shows that the power to take action for criminal contempt lies only with the Supreme Court or the High Court which can take action *suo moto* or under Clause 1 of Section 15, provided a motion is made by the Advocate-General or the permission is granted by the Advocate General or by any other Notification as mentioned in the said Section. Since this has not been done, it has been contended that the learned Magistrate has acted beyond his jurisdiction by issuing the Show Cause Notice to the petitioner and its Managing Director. It has also been stated that since the services of the Presiding Officer, who

had issued the Notice, have actually been terminated on account of the fact that his functioning was totally not in tune with the conduct of a normal Judicial officer, therefore, the impugned order is also not sustainable. It was contended that the passing of the present order by the said judicial officer was one of the series of the illegal orders which was passed by the said Judicial officer.

10. There is absolutely no dispute that the criminal contempt is one of the most serious offences as it denigrates the institution as a whole and scandalizes the administration of justice. This may be done by means of words or writings or trying to interfere with the normal course of justice and has to be dealt with strongly. But at the same time, the notice for criminal contempt ought not to be issued in a very casual manner.
11. In the instant case, there was absolutely no reason or occasion for the petitioner company to have known about the factum of death of the accused who had unfortunately died before the presentation of the complaint to the Court concerned. The petitioner company had, in exercise of its rights, presented the cheque for encashment which was

purportedly issued by the accused and if it was dishonoured, the only requirement of law was that it had to issue a statutory notice under Section 138 of the Negotiable Instruments Act raising the demand, it was not a part of the job of the petitioner to find out after the dishonour of the cheque as to whether the drawer of the cheque is alive or not before filing of the complaint. I feel that the learned Magistrate, by simply using high phrases of English, has tried to impress as if he is the only officer who is worried about the majesty of law. He has far exceeded his jurisdiction in issuing the Show Cause Notice to the petitioner, for which he had absolutely no authority nor is such an impugned order sustainable in the eyes of the law.

12. I, accordingly, set aside the impugned order dated 5.2.2011 passed by the learned Magistrate, as being illegal and without any sanction of law.
13. File be consigned to the Record Room.

APRIL 09, 2012
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V.K. SHALI, J.