

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : 04th JULY, 2013

DECIDED ON : 13th SEPTEMBER, 2013

+ CRL.M.C. 120/2013 & CRL.M.A. 470/2013

BARCLAYS BANK PLC & ORS.

..... Petitioners

Through : Mr.Sandeep Sethi, Sr.Advocate
with Mr.Rajnish Gaur, Advocate.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through : Mr.M.N.Dudeja, APP.
Mr.Satish Tamta, Advocate with
Ms.Ruchi Kapur, Advocate for R2.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present petition under Section 482 Cr.P.C. has been filed by the petitioners for quashing of complaint case bearing No. 58/1 of 2011 and order dated 07.03.2012 by which they were summoned to face trial for committing offences under Sections 417/418 IPC. Respondent No.2 has contested the petition.

2. I have heard learned Senior Counsel for the petitioners and counsel for the respondent No.2 and have examined the record.

Respondent No.2 sole proprietor of M/s. Payless International was granted Bill Discounting Facility to the extent of ₹ 1 crore with a maximum tenure of 120 days which was to expire on 01.11.2008. On 21.10.2008, respondent No.2 tendered two Bills of Exchange for USD 129868.80 and 130723.20 to be sent to National Bank of Dubai for collection on account of M/s. Desert Trip Trading Dubai. Petitioner No.1 discounted the bills and paid a sum of ₹ 1 crore to the respondent No.2 on 23.10.2008. Subsequently, Letter of Variation dated 23.06.2009 was executed whereby terms and conditions were modified. It was to expire on 17.12.2009. The sanction terms were again amended vide Amendatory Agreement dated 17.12.2009 which was to expire on 31.03.2010. On 14.12.2009, the respondent No.2 tendered two Bills of Exchange for USD 98,496 and 81,691.20 to be sent to National Bank of Dubai for collection on account of M/s. Max Trading Dubai. The petitioner No.1 discounted the said export bills to the extent of INR 79.30 lacs and adjusted the discounted proceeds against the overdue bills of M/s. Desert Trip Trading Company. Since the Bank did not receive any payment from National Bank of Dubai, it adjusted a sum of ₹ 20,57,884.33/- being the maturity proceeds of fixed deposit and another sum of ₹ 9,979.47/- being credit amount in the account of respondent No.2. Respondent No.2 did not pay the

remaining dues despite requests and notice dated 20.07.2010 was issued to call upon him to pay a sum of ₹ 80,50,742.61/- along with interest @ 9.75% p.a. w.e.f. 20.07.2010. The Bank presented the cheque 062126 dated 23.07.2010 issued by respondent No.2 in its favour towards discharge of the civil liability amounting to ₹ 80 lacs. On presentation, the cheque was dishonoured for the reasons 'payment stopped by drawer' vide return memo dated 23.07.2010. The petitioner No.1 received foreign remittance of USD-5000 equivalent to INR 2,31,789.70 and USD- 2500 equivalent to INR 1,14,539.70/- from Max Target Trading subsequently for which necessary adjustment were given towards outstanding dues. Total liability of ₹ 76,553,670.60/- existed against the dishonoured cheque after adjustment. The Bank filed complaint No. 640/2010 under Section 138 Negotiable Instruments Act in which respondent No.2 was summoned and the said proceedings are pending. Learned Senior counsel urged that the summoning order cannot be sustained as it was based upon surmises and conjectures and was passed without application of mind. Delay for one year after issuance of notice under Section 138 Negotiable Instruments Act has not been explained. The complainant did not disclose as to how the outstanding amount of ₹ 80 lacs or so was not payable by him. The complainant enjoyed various financial facilities from time to

time and did not make the payment for which the proceedings under Section 138 Negotiable Instruments Act were instituted. The facility of 2009 was a mere extension / renewal of the original facility and all the documents and cheque submitted at the time of the original facility were to remain in force. The cheque in question was never demanded back by the complainant. He never reported to the bank about its loss/ misplacement. There is no document to show that the bank ever misrepresented him that the cheque was lost by it. Status report filed by the police was not dealt with in the impugned order. The petitioners No.2 & 3 never dealt with the complainant and no role has been attributed to them. They can't be held liable under the concept of vicarious liability.

3. Complaint case under Section 403/406/420/467/468/471/ 211/477A read with Section 120B/34 IPC was lodged by respondent No.2 against the present petitioners and eight other respondents therein. He alleged that he had given a blank undated cheque 062126 for ₹ 80,00,000/- to the Barclays Bank as a security against post shipment credit facility. After the expiry of agreement dated 02.11.2007 on 01.11.2008, he approached the bank for return of the cheque but it expressed inability as it was misplaced and was untraceable. He by a letter dated 31.01.2009 requested the bank to stop its payment and also lodged a missing report

with the Police Station, Greater Kailash-I. When he got notice under Section 138 Negotiable Instruments Act in August, 2010, he learnt that the cheque in question was not deliberately returned with an intention to cheat him. It was presented in the bank with a sole purpose to initiate proceedings under Section 138 Negotiable Instruments Act.

4. It is not in dispute that the petitioners and respondent No.2 had entered into various transactions pursuant to execution of Facility Agreement dated 02.11.2007 and Letter of Variation dated 23.06.2009. The enjoyment of credit facilities for discounting export bills are not under challenge. The controversy is regarding the issuance of cheque No. 062126 for ₹ 80 lacs which was purportedly given to the bank as 'security' vide agreement dated 02.11.2007. When he asked for its return, he was misrepresented that it was untraceable and was misplaced. He further averred that the Bank advised him to give a letter to stop its payment to avoid misuse and he by a letter dated 31.01.2009 requested it (the Bank) to stop its payment. In schedule 'B', attached with Facility Agreement, there is specific pre disbursement condition for the borrower to provide an undated cheque (UDC) super scribed in the format, 'Not exceeding INR 8.0 Million'. Letter of Variation of Facility Agreement does not contain any such condition.

5. Record reveals that on receiving the complaint, the Metropolitan Magistrate decided to hold an inquiry into the complaint himself and recorded evidence. After hearing arguments and considering the evidence, he by his order dated 07.03.2012 directed process to be issued only against the present petitioners for committing the offence under Section 417/418 IPC. The Trial Court gave cogent reasons for holding that there were sufficient grounds for proceedings against the petitioners. He took in the consideration various documents i.e. Ex.CW-1/A (Initial agreement); Ex.CW-1/B (complaint to the police) and CW-1/C (instructions to the bank to stop payment of the cheque in question); Ex.CW-1/D (new agreement); Ex.CW-1/E (amendment to the letter of variation); Ex.CW-1/G (reply to the notice under Section 138 Negotiable Instruments Act) and Ex.CW-1/H (complaint to the police) proved by the complainant in his pre-summoning evidence. The Petitioners have not challenged the genuineness and authenticity of the documents. The petitioners are not categorical to state as to when the cheque in question was received by them and was issued in the discharge of existing liability. The impugned order issuing process against the petitioners is a reasoned one which took into consideration the allegations in the complaint as also the evidence adduced in support of it. The Metropolitan Magistrate clearly

applied his mind and analyzed the evidence minutely. It is not a case where he passed the order issuing process in a mechanical manner or just by way of routine. The fact that the petitioners were not summoned for offences other than Sections 417/418 IPC and no process was issued against the remaining eight respondents in the complaint reflects that there was application of mind. It is a settled legal preposition of law that the scope of inquiry under Section 202 Cr.P.C. is extremely limited - limited only to the ascertainment of the truth or falsehood, of the allegations made in the complaint on the materials placed by the complaint before the Court for the limited purpose of finding out whether a prima facie case for issue of process has been made out. The Section does not say that a regular trial in adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can be legally called upon to answer the accusations made against him only when a process has issued and he is put on trial. In the instant case, the complainant's allegations are that cheque in question was given as a 'security' and the petitioners were liable to return it after the expiry of the initial agreement being an undated cheque given as 'security'. The petitioners did not return the cheque and falsely claimed that it was misplaced. On their asking to prevent its misuse, he issued letter (Ex.CW-

1/C) to stop its payment. Despite that, the cheque in question was presented in Bank where the intimation to stop payment was given in 2009 and return memo dated 23.07.2010 was procured with the remarks 'payment stopped by drawer'. The petitioners have not placed on record any document to show when the complainant directed the Bank to stop the payment after issuance of the cheque in 2010. In fact, in 2009 itself, the complainant had given in writing to the Bank to stop payment. It is a matter of trial as to how and under what circumstances, the cheque in question was utilized by the petitioners in 2010 when the complainant had already stopped its payment in 2009. The allegations in the complaint cannot be brushed aside at this stage. The complainant has specifically pleaded that petitioner No.2 was the authorized signatory and petitioner No.3 was Managing Director of the Bank at the relevant time. Prima facie there are sufficient grounds to proceed against them and I find no illegality in the impugned order.

6. The petition is unmerited and is dismissed. Pending application also stands disposed of being infructuous. It is however made clear that the observation in the impugned order and this order shall have no impact on the merits of the case. It is expedient that both the matters

under Section 138 Negotiable Instruments Act and complaint case are dealt with in one Court to avoid conflicting judgments.

(S.P.GARG)
JUDGE

SEPTEMBER 13, 2013

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