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HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 102 of 2015

Mrs.Shabnam Tazar W/o Mohd. Abdul Wahid Tazar, aged about 46 years, 22A Heavy Industrial Area Hath Khoj Bhilai, Tah. & Distt. Durg (C.G), R/o 6/10 Priy-Darshani Parisar, West Nehru Nagar, Police Station -Supela – Bhilai, Tah. & Distt. Durg (C.G)

---- Petitioner

Versus

Shri Ajay Dalmiya S/o Madanlal Dalmiya, aged about 49 years, Director M/s Sindal High Tech Engineering Private Ltd. First Floor, Singh Auto Building, Ring Road No. 2, Bhanpuri, Raipur-492001, Tah. & Distt. Raipur (C.G)

---- Respondent

For Petitioner	:	Mr. V. G. Tamaskar, Advocate
For Respondent	:	Smt. Fouzia Mirza, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

30/08/2016

The present petition under Section 482 CrPC has been filed challenging the filing of a criminal complaint under Section 138/145 of Negotiable Instrument Act before the Judicial Magistrate First Class, Durg.

2. Facts of the case in brief are that the petitioner is one of the directors of a company M/s Jaitech Steel Forgings Private Limited. Likewise the respondent-complainant is also one of the directors of a company M/S Sindal Hitech Engineering Private Limited. There was a Memorandum of Understanding entered into between the two Companies on 17th June, 2012 in respect of taking over of the company in which the petitioner was a director by the company in which the respondent was a director. It was agreed that the respondent's company would pay the entire liabilities of M/S Jaitech Steel Forgings Pvt. Limited in which the petitioner was one of the directors and for which some initial payments were also made by the respondent's company to the petitioner's company. However, in due course of time, since for some reasons the MOU could not be acted upon, it was decided that the amount which has been paid by the respondent's company to the petitioner's company shall be refunded and for the balance amount, the petitioner is said to have issued three cheques in favour of the respondent's company. When these cheques were put for realisation, the cheques got dishonoured at the bank on account of in sufficiency of fund which forced the respondent to file a complaint case against the petitioner for an offence under Section 138/145 of Negotiable Instrument Act. It is this filing of the complaint which has been assailed by the petitioner by way of the present petition under Section 482 CrPC.

3. According to the counsel for the petitioner, the complaint case itself could not have been maintainable for the reason that the complaint case has been lodged in the individual capacity and therefore it would not be sustainable. According to the counsel for the petitioner, the cheques were issued in discharge of the liabilities of one company towards other and since it was a transaction made for and on behalf of a company, the company was a necessary party. Therefore, the company not having been arrayed as a complainant, the present complaint itself would not be maintainable and deserves to be rejected. It was contended by the counsel for the petitioner that there was no personal liability in any manner of the petitioner to the respondent and in the absence of a personal liability also, the complaint case under Section 138 of Negotiable Instrument Act in the given facts of the case would not have been maintainable and the same deserves to be quashed. According to the counsel for the petitioner, since the payment made by the petitioner to the respondent was for and on behalf of the company, the company would have been a necessary party in the complaint case. Counsel for the petitioner relied upon the following decisions of the Supreme Court in support of his contention:

1) Aneeta Hada Versus Godfather Travels and Tours Private Limited.[1]

2) Pooja Ravinder Devidasani v. State of Maharashtra & Anr. [2]

3) Gunmala Sales Private Limited and Others Versus Navkar Promoters Private Limited and others.

4. Per contra, opposing the petition counsel for the respondent submitted that in fact, the present CrMP is too premature at this juncture to be entertained for the reason that on the date on which the present CrMP has been filed i.e. 07.02.2015 to be precise, the alleged complaint which has been lodged by the respondent was not even registered. Further, summons were also not issued to the present petitioner giving rise to any cause of action for the purpose of filing of the present CrMP. It was further submitted that a bare perusal of the cheques which have been issued would clearly reflect that the cheques have in fact been issued in the personal capacity duly signed by the petitioner herself and that the cheques also do not bear the seal or logo of the company by which it could have been presumed to be issued for and on behalf of the company. According to the counsel for the respondent, once when the cheques have been issued in the personal capacity, as per the provisions of Negotiable Instrument Act, there has to be a clear presumption which has to be drawn of there being a personal liability of the petitioner to the respondent-complainant and for discharge of which the cheques have been issued. Thus, the claim of the petitioner for the necessity of the company being made as a party is not sustainable. It was also objected by the counsel for the petitioner that since subsequent to the filing of the present complaint the Court below on 11.05.2015 ordered for registration

1 (2008) 13 SCC 703
2 2015 CRI.L.J. 1165

of the case and only on 28.07.2015 bailable warrants were also issued, the subsequent developments have also not been brought before this Court nor has he challenged the same and for this reason also the petition deserves to be rejected.

5. Having heard the contentions put forth by the counsel appearing on either side for proper adjudication of the facts it would be relevant to first take into consideration the disputed cheques itself. From the cheques it clearly reflects that the same were issued in the name of Sindal Hitech Engineering Pvt. Ltd. and the cheques bear only the name of Sabnam Tazar i.e. the petitioner herein. Further, the cheque does not reflect it to be issued in the name of a company neither is there any seal or logo of the company at the place where the petitioner has signed on the cheque so as to even presume that the cheque was issued for and on behalf of the company. All the cheques which have been issued in the instant case are in the name of the petitioner alone and therefore for the purpose of lodging of the complaint under Section 138 Negotiable Instrument Act in the opinion of this Court the required relevant ingredients have been fulfilled by the respondent-complainant. Further, Section 118 of the Negotiable Instrument Act clearly envisages the presumption to be drawn unless the contrary is proved and for proving the contrary is a matter of evidence which at the threshold cannot be decided. The absence of any proof in the contrary or any proof in the rebuttal, in the opinion of this Court, it would not be proper, legal and justified for quashing of the entire complaint itself.

6. At this juncture it would also be trite to refer to the ratio laid down by the Supreme Court in the judgment of Gunmala Sales Private Limited (supra) which has also been relied upon by the counsel for the petitioner wherein the Supreme Court referring to the powers of the High Court under Section 482 of CrPC has held that the powers should be exercised sparingly with circumspection and not on the mere asking. In paragraph 34.4 it has been held as under:

> "No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director."

7. So far as the judgments relied upon by the counsel for the petitioner are concerned, if we look into the facts of the said cases, it would reveal that the facts of those case were entirely different from the facts of the present case in as much as in those cases the cheques had been issued for and on behalf of the company which in the instant case is missing and therefore, those judgments are distinguishable on the facts of the present case.

8. In addition, whatever contentions and submissions which the petitioner intends to take are in fact his defence and for establishing the defence, the evidence on behalf of the parties would have to be adduced wherein either of the parties would get opportunities for rebutting the contentions put forth on either side. It is all the more pertinent to mention that till date the charge has not been framed and as such the petitioner would also have the opportunity of addressing the trial Court on these facts and issues at the time of argument before framing of charge.

9. For the aforementioned reasons and circumstances, this Court is of the opinion that no strong case is being made out for interfering with the complaint which has been lodged against the petitioner by the respondent.

10. Thus, the present CrMP being devoid of merit deserves to be and is accordingly rejected. Consequently, the interim relief granted by this Court on 17.08.2015 also stands vacated.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola