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

\+   CRL.M.C. 665/2016 & Crl.M.A. 2779/2016

Date of Decision : April 05th, 2016

M/S RAM CHANDRA KRISHAN CHANDRA FANTASY & ORS ..... Petitioners

Through Mr.Kanwar Udai Bhan Singh and Mr.Mukesh Chauhan, Advs.

versus

THE STATE (GOVT OF NCT OF DELHI) & ORS ..... Respondents

Through Ms.Meenakshi Chauhan, APP for the State.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the "Cr.P.C.") has been filed by the petitioners for quashing of order dated 02.05.2009 passed by the learned Additional Rent Controller, Rohini Courts, Delhi vide which the petitioners have been summoned as accused persons.

2. The facts, in brief, are that the petitioner no.1 is a partnership firm and petitioner no.2 and 3 are its partners. The respondent no.2 is also a partnership firm and respondent no.3 and 4 are its partners. The respondent no.2-complainant filed a criminal complaint under Section

200 Cr.P.C. read with Section 138 and 142 of the Negotiable Instruments Act, 1881 and Section 420 IPC against the petitioners-herein. In the complaint, it was alleged that the complainant is the owner of immovable property No.F-121, Main Market Rajouri Garden, New Delhi-110027. The accused approached the complainant with the proposal of franchise agreement as they wanted to use the premises of the complainant for the extension of their business. The parties entered into a Franchise Agreement dated 30.08.2001. Thereafter, some dispute arose and the arbitration proceedings were initiated wherein the accused persons agreed to resolve the dispute and entered into a Compromise Agreement dated 09.03.2007. The accused persons issued various cheques in response to his liability towards the complainant including the cheque No.772079 dated 07.06.2008 for a sum of Rs.45,477/-. The cheque was returned unpaid when presented for encashment with the remarks "Funds Insufficient". A legal notice dated 23.08.2008 was sent to the accused, but despite its receipt, the accused failed to make the payment. Thus, the complaint was filed.

3. The complainant tendered their evidence before the Court and after hearing the arguments on summoning, the Trial Court summoned the petitioners as accused. Feeling aggrieved by the same, present petition has been filed by the petitioners.

4. Argument advanced by the learned counsel for the petitioners is that the purported award was passed by the Arbitrator on 01.12.2008, therefore, whatever the liability is upon the petitioner, is only after the date of passing of the award. Further argument advanced is that the

compromise agreement dated 09.03.2007 was terminated, therefore, the cheques issued by the petitioners became redundant, issued without any liability. On the date of presention of the cheques, the petitioners had no debt or liability towards the respondent no.2-4. The petitioners stopped the payments of the cheques to avoid misuse which has been done by the respondents in the present case. It is further argued that the cheques were issued in pursuance of a compromise which cannot be termed as a legally enforceable liability.

5. In support of these contentions, learned counsel has relied upon judgment in the case of ***Thakur Arora v. The State NCT of Delhi and Anr. MANU/DE/1549/2009*** in which it was observed that a separate complaint could not be maintained since the cheque issued in terms of the compromise was not towards any liability for which the earlier complaint had been filed and further when the accused there had been convicted and sentenced.

6. The main contention of the petitioners is that the cheque in question was issued without any legally enforceable liability. It has been contended that the cheques were issued in terms of the compromise and the same cannot be said to have been issued in discharging of any liability, therefore, the complaint in question is not maintainable.

7. I have gone through the arguments advanced by the learned counsel for the petitioners and have gone through the material available on record.

8. It is admitted case of the petitioners that they entered into a franchise agreement dated 30.08.2001 with the respondent no.2 to 4 to

run their business vide which they used the premises of the respondents nos.2 to 4. After sometime, some dispute arose between the parties and the matter was referred to the Mediator. Thereafter, an agreement dated 09.03.2007 was entered between the parties. As per the terms of the said agreement, the petitioners agreed to take the premises of the respondent nos.2 to 4 on rental basis and also agreed to make the payment after adjustment of security deposit. It is after entering into the said agreement, the petitioners issued several cheques including the cheque in question.

9. In the present case, the petitioners themselves admitted their liability towards the respondent no.2 to 4 by issuing the cheques including the cheque in question at the time of entering into agreement dated 09.03.2007. It is not the case of the petitioners that they earlier issued some cheque and with a view to enter into compromise with the respondent nos.2 to 4 to settle the amount of earlier cheque, they again entered into the agreement dated 09.03.2007 and thereafter the cheque in question was issued. It is not even the case of the petitioners that prior to issuance of 37 cheques including the cheque in question, any cheque was issued by the petitioners in favour of the respondent nos.2 to 4 or that they had entered into compromise with the respondent nos.2 to 4to settle the amount of earlier issued cheque. Therefore, the judgdment referred by the petitioners in the case of ***Thakur Arora*** (supra) is of no assistance to them as the facts of the present case are distinguishable from the facts of the said case.

10. As discussed above, it is apparent that the cheque in question was issued by the petitioners in discharge of their legally enforceable

liability. This Court is of the considered opinion that the petitioners have failed to make out any case for setting aside the impugned order passed by the Court below. This is not a fit case to exercise the jurisdiction under Section 482 Cr.P.C.

11. The petition is accordingly dismissed.

12. Application Crl.M.A. 2779/2016 is also disposed of.

(P.S.TEJI)
JUDGE

APRIL 05, 2016
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