IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-47805-2017 (O & M)
Date of Decision:23 Oct, 2019

Shree Rani Sati Sales Pvt. Ltd. and others ...Petitioners

Versus

Jolly Health Care ...Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Awanish Kumar, Advocate
for the petitioners.

Mr. Amandeep Singh, Advocate
for the respondent.

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MANOJ BAJAJ, J.

Petitioners have filed this petition under Section 482 Cr.P.C. for quashing of criminal complaint COMA No.13300/17 dated 02.11.2017, titled Jolly Health Care vs. Shree Rani Sati Sales Pvt. Ltd. and others (Annexure P-11) under Section 138 of the Negotiable Instruments Act, 1881 ('Act' – for short), as well as the summoning order dated 03.11.2017 (Annexure P-13) passed by the Judicial Magistrate Ist Class, Ludhiana.

The facts in brief leading to the present petition as under:-

Petitioner No.1 was appointed as super stockist/distributor by respondent-Company (complainant) for its business at Jharkhand and at that stage, petitioner No.1 had furnished a security cheque. Considering the performance of petitioner No.1, respondent issued the similar appointment in respect of its business in the State of Bihar as well. In July 2016, the dispute between petitioner No.1 and respondent pertaining to the settlement of accounts erupted and various negotiations took place between them. There were separate ledgers maintained by respondent in respect of the distributorship of petitioner No.1 in each State. According to petitioner No.1, it was on 03.03.2017 respondent revised the accounts ledger and sent the communication to petitioner No.1 and intimated that an amount of ₹1,89,889/- was outstanding. It was further clarified that upon clearing this amount, complete account of the respondent with petitioner No.1 in Bihar and Jharkhand would be settled and there would be no dues. Complainant assured that the two security cheques bearing Nos.168724 and 207304 would be returned upon clearance of the due amount of ₹1,89,889/-. Thereafter, complainant sent another e-mail dated 05.08.2017 and claimed the outstanding dues of ₹1113687/- for its Patna Office and ₹1683554/- for Ranchi Office. The said communication was responded to by Ashutosh Tekriwal (Authorized Signatory of petitioner No.1) on the same day and refuted the same by confronting it with its previous e-mail dated 03.03.2017. It was clarified that only a sum of ₹1,89,889/- was payable and he agreed to pay the said amount. A sum of ₹3,000/- was stated to be received from Singhania Distributors, Dhanbad towards damages. Also, the respondent was asked to give its consent for the said payment and further requested to issue NOC and return the security cheques.

That the respondent on 21.08.2017, sent the final reminder and claimed the payment of outstanding amount of ₹11,13,687/- due towards Shree Rani Sati Sales Pvt. Ltd., Patna and a total sum of ₹1683554/- as due towards Shree Rani Sati Sales Pvt. Ltd., Ranchi, with interest charged till 05.08.2017. A period of 6 days was given for making the payment otherwise it was mentioned that the security cheques would be presented to get the dues cleared.

Petitioner No.5 (Authorized Signatory of petitioner No.1) got a case FIR No.418/17 registered on 22.08.2017 at Police Station Gandhi Maidan, District Patna for the offences punishable under Sections 406, 420, 504, 506 and 34 IPC (Annexure P-8), against Directors of the complainant Company.

The respondent presented the cheque bearing No.168724 dated 28.08.2017 for a sum of ₹1114210/- drawn at HDFC Bank, Bimla Sadan, Exhibition Road, Patna to its Banker namely ICICI Bank, Dugri Branch, Ludhiana for encashment, however, the same was returned unpaid with remarks 'Payment stopped by Drawer'. The said intimation was sent through Memo dated 30.08.2017. Respondent through its Advocate Gurdeep S. Sherdil sent the statutory notice dated 21.09.2017 and raised a demand for payment of the cheque amount of ₹1114210/- within 15 days. Since petitioner No.5 had already lodged an FIR against the respondent, therefore, neither any response was sent to the said notice nor any payment was made by the petitioners. Respondent instituted the complaint under Section 138 Negotiable Instruments Act, 1881. Thereafter the pre-summoning evidence was adduced and after considering the same , trial Court proceeded to summon the accused (petitioners) for commission of the offence punishable under Section 138 of the 'Act' vide order dated 03.11.2017.

Notice of motion in this petition was issued by this Court on 15.12.2017 and the trial Court proceedings were kept in abeyance. In response to the notice, reply on behalf of complainant by way of affidavit of Mukesh Madhok Proprietor, Jolly Health Care, Ludhiana was filed on

31.07.2018. In the reply, it was mentioned that the complainant being manufacturer of Ayurvedic products appointed petitioners as distributors for looking after the business of trading of products and the parties entered into a trade and a statement of account was being maintained qua each area taken care of by the petitioners. It was claimed that as per the statement of account maintained by the respondent-firm, a total sum of ₹1698046/- was outstanding towards Ranchi Branch of petitioner No.1, and likewise a sum of ₹1114210/- was due towards the Patna Branch. The amount was calculated after adjusting credits into running accounts of the petitioners. It was explained that certain discounts on the higher side were given to the petitioners, but instead of taking immediate benefit of those discounts, the petitioners failed to make the payment on time, despite reminders and phone calls and finally the discounts given to the petitioners were recalled. Accordingly, the cheque was presented with the Bank for its encashment after mentioning the actual amount due towards the petitioners. The factum of negotiations between the parties was not disputed and it was pleaded that the respondent at the request of the petitioners gave a final outstanding amount on no profit no loss basis only with an intention to recover the cost. Further as per reply, the consolidated statement was prepared by complainant and forwarded to accused. The e-mail dated 03.03.2017 was admitted by complainant, who described it as the cordial attitude of the respondent-firm, whereby the petitioners were asked to clear the dues immediately. It was further explained that the amount mentioned in the said e-mail was after deducting discounts, waivers and profits of the respondent-firm and offer was made to the petitioners to settle the account immediately. However, considering the conduct of the petitioners, the respondent cancelled discounts etc. and forwarded another e-mail on 05.08.2017 demanding the actual amount due towards the petitioners. There is no denial to the response of the petitioners sent on the same date i.e 05.08.2017 whereby they had agreed to pay a sum of ₹1,86,889/-. However, reference was made to Annexure P-7 i.e. the final reminder asking the petitioners to clear the dues within the stipulated period.

It was further admitted in reply that the petitioners lodged the FIR against the respondent and condemned the said act on the ground that the dispute between them pertains to the accounts for which the petitioners have the remedy by filing a suit seeking relief of rendition of accounts. In the end, it was prayed that the petitioners purchased the goods from the petitioners from time to time and the due amount was not paid and, therefore, the cheque was presented to recover the legally enforceable debt against the petitioners and justified the complaint under Section 138 of the Act. It was prayed that the petition be dismissed.

The above written statement was controverted by petitioners by filing the re-joinder, which reiterated the version as contained in the petition.

Learned counsel for the petitioners contended that respondent/complainant had concealed the material fact from the trial Court in the impugned complaint as it did not mention the important fact that on 03.03.2017, the total outstanding was described as ₹1,89,889/-. The said communication was crystal clear which specifically expressed that upon payment of the said amount, the account in respect of Bihar and Jharkhand would be cleared and the security cheques would be returned.

Learned counsel further contended that on 05.08.2017, an exorbitant demand was raised by the complainant thereby demanding a sum of more than ₹27 lacs (for both units) as outstanding amount. He submitted that the response was sent by petitioners on the same day and highlighted that only a sum of ₹1,86,889/- was due, a sum of ₹3,000/- was adjusted towards the damages and the petitioners had clearly conveyed their intention to make the remaining due payment. Learned counsel argued that the complaint did not disclose this important fact and simply pleaded in complaint that the cheque bearing No. 168724 dated 28.08.2017 was issued towards discharge of the liability. According to him, the said cheque was misused by the complainant and after dishonor of the same, the complaint was filed. It was vehemently argued that the petitioners had already lodged the FIR on 22.08.2017 against the complainant, who was threatening to extort money by misusing the cheques and without disclosing all these important facts, the complaint was filed to seek prosecution of the petitioners. According to him, the complaint being misuse of process of Court and, therefore, the same deserves to be quashed. In support of the argument, he placed reliance upon the judgments of Supreme Court in the cases of **Suryalakshmi Cotton Mills Limited vs. Rajvir Industries Limited and others (2018) 13 SCC 678; Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458; Indus Airways Private Limited and others vs. Magnum Aviation Private Limited and another (2014) 12 SCC 539; Madhavrao Jiwajirao Scindia and others vs. Sambhajirao Chandrojirao Angre and others (1988) 1 SCC 692.**

On the other hand, the prayer was vehemently opposed by the learned counsel appearing on behalf of the respondent. According to him, there were various business transactions between the parties in both the States i.e. Bihar and Jharkhand. It was argued that the cheque in question belongs to the account of the petitioners and all the requirements of Section 138 were fulfilled and, therefore, the trial Court has rightly taken the cognizance for prosecution of the petitioners. Learned counsel was fair in admitting the communication dated 03.03.2017, however, it was explained by him that the amount mentioned in the said communication was with the aid of incentives and discounts which were later on withdrawn. It was also not disputed that the FIR was lodged by the petitioners and the said criminal case is separately pending at Patna. In support of his arguments, he has placed reliance upon the judgments of this Court in the case of **M/s New Tekneek Industry through its partner -Bhushan Verma and others vs. M/s Polylon Fabrics Private Limited through its Director-Nikhil Gupta, 2018 (3) RCR (Criminal) 978 and M/s Aura Institutions Pvt. Ltd. and others vs. M/s Starex Education Society (Regd), 2013 (13) RCR (Criminal) 562;** and judgment of Delhi High Court in the case of **Four Seasons Energy Ventures Pvt. Ltd. and others vs. State of NCT of Delhi and another, 2013 (2) RCR (Civil) 391.**

After hearing of learned counsel for the parties, this Court finds that the issue raised in the petition revolves around the e-mail/communication of demand dated 03.03.2017 and its effect on the impugned complaint under Section 138 of the Act.

Whether the admission by the complainant regarding material variation regarding actual due amount and the amount claimed by presenting the security cheque, would still keep the statutory presumption under Section 139 of the Act in tact and attached to the instrument?

First of all, a bare perusal of the complaint makes it clear that the complainant has not disclosed the communication dated 03.03.2017 in its complaint before the trial Court. The complaint is founded on those formal pleadings in order to convey the fulfilment of necessary ingredients to constitute the offence as required under Section 138 of the Act. Normally, in such cases, the presumption in favour of the complainant is rebutted by way of evidence on behalf of the accused as most of the times it contains disputed facts, but incidentally in the present case, the communication dated 03.03.2017 mentioned the cheque number as well, which was obtained by complainant as a security cheque and a clear demand of ₹1,89,889/- was set up. The said communication is extracted below:-

> *"Kindly find attached revised accounts ledger for your kind perusal. As per this, a total of ₹189889/- is pending towards you. On clearing this amount, our complete account with you in Bihar & Jharkhand will be settled and after that no dues will be there. Also, we have 2 cheques of you with us (Chq no.168724 of Shree Rani Sati Sales Pvt. Ltd. & Chq no.207304 of Shree Narayni trading co), which were fulfilled by you as security cheques.*
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> *These cheques will stand invalid and will be returned to you immediately after clearing due amount of ₹189,889. So, request you to transfer the said amount as early as possible."*

A reading of the above makes it absolutely clear that the complainant itself described ₹189,889/- as the total outstanding amount due towards the petitioners in respect of both the units at Patna and Ranchi. It was also clarified that in the event of payment of the said amount, there would be no dues and the accounts would be settled. Apart from it, the complainant itself agreed to return the security cheques to the petitioners. Once the cheque obtained as a security was attached with a specific due amount by the complainant and further conveyed it to the account holder then subsequently the said cheque could not have been filled up with an excessive amount unilaterally by the drawee. It was also not disputed by the learned counsels for the rival parties that there was no business between the parties for a long time as a result of the dispute regarding settlement of accounts. The argument of learned counsel for the respondent that the previous demand was raised by giving benefits of incentives, discounts and giving up the profit is not worth acceptance as the said communication dated 03.03.2017 does not contain any such fact. Even the communication sent on 05.08.2017 by the petitioners was not disputed wherein he had agreed to make payment of ₹1,86,889/-. The facts and circumstances of the case reveal that the complainant demanded the exorbitant amount from account holder thereby compelling the petitioners to instruct the bankers for stopping the payment against the said cheque and also to lodge the FIR against the complainant.

A perusal of the FIR dated 22.08.2017 regarding misuse of the security cheque by the respondent further reveals that it contained the dispute between the parties relating to the settlement of accounts. The trial in the said FIR is admittedly pending.

Thus, it is clear that the complainant skillfully fanned away the relevant facts and projected tunnel view before the Court by pleading the facts selectively whereupon the cognizance was taken by the trial court and summoned the petitioners as accused.

The above facts and circumstances clearly establish that the presumption carried under Section 139 of the Act stood shattered by the complainant itself and, therefore, this Court has no hesitation in holding that continuation of complaint is meaningless. The judgments relied upon by the respondent are not applicable in the facts and circumstances of the present case, as in the present case, there is no escape for the complainant from his own admission as conveyed to the petitioners in the communication dated 03.03.2017 (Annexure P-4).

In view of the above discussion, the petition is allowed and the impugned complaint dated 02.11.2017 (Annexure P-11)as well as summoning order dated 03.11.2017 (Annexure P-13) are hereby quashed.

23 Oct.,2019 **(MANOJ BAJAJ)**
sheetal **JUDGE**

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No