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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 12th March, 2019

+ CRL.M.C. 555/2016 & CrI.M.A. 2315/2016

RITU JAIN

..... Petitioner

Through: Ms. Anjali J. Manish & Ms.
Nidhi Saini, Advs.

versus

THE STATE THROUGH STANDING COUNSEL & ANR

..... Respondents

Through: Mr. K.S. Ahuja, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is described as the proprietor of a firm called M/s Shrey Overseas. On the criminal complaint (CC No. 1047/2015) of the second respondent, she and her said firm (shown in the array as second and first accused respectively) were summoned by the Metropolitan Magistrate by order dated 19.05.2015, on the accusations of offence punishable under Section 25 read with Section 27 of the Payment and Settlement Systems Act, 2007. It appears that in the said criminal complaint, the second respondent (the complainant) had, *inter alia*, mentioned the name of one Manish Kumar Jain (shown in the array as third accused), his description being that of a partner of M/s Shrey Overseas. The Metropolitan magistrate, however, declined to issue any process against the said person noting that as per the

evidence adduced in the preliminary inquiry (on affidavit), the case was essentially against the proprietary firm of the petitioner herein.

2. The petition at hand was filed seeking quashing of the proceedings in the said criminal complaint case, invoking the inherent powers and jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.). The petition is resisted by the second respondent (complainant) by a formal reply to which the petitioner has also filed a rejoinder.

3. The allegations set out in the criminal complaint and the evidence led in support at the preliminary inquiry reveal that the complainant is engaged in the business of trading in export and import licenses. It had supplied licenses to the proprietary concern of the petitioner, they being Focus Product Scheme (FPS) licence no. 0519014472 dated 08.12.2014, Focus Market Scheme (FMS) licence no. 0519014755 dated 10.12.2014 and FPS no. 0519014752 dated 10.12.2014, the former two for a total consideration of Rs.14,41,969/- and the last one for a consideration of Rs.4,15,177/-, after discount and taxes, vide invoices dated 22.12.2014 and 02.01.2015. It appears that against the first said invoice dated 22.12.2014, cheque no. 000316 dated 06.01.2015 was issued in the sum of Rs.14,41,960/-, with instructions to the bank “*yourself for RTGS*” and handed over to the complainant, the intention being for transfer of funds by RTGS. Similarly, cheque no.000633 dated 17.01.2015 for Rs.4,15,177/- with instructions to the bank “*yourself for RTGS*” was handed over to the

complainant, the instruction being for transfer of such funds by RTGS, both against the two above-mentioned invoices.

4. The complainant's case is that the cheques were issued by the petitioner and handed over along with separate applications dated 06.01.2015 and 17.01.2015 for RTGS transfer of funds. The two instruments were statedly presented at the concerned bank where the account was held in the name of the proprietary concern of the petitioner, but electronic funds transfers could not be executed, the same being dishonoured on 09.03.2015 since the petitioner had issued instructions for "*stop payment*". The complainant has claimed that a statutory notice of demand was sent on 28.03.2015, but no payment was made within the requisite period, this according to the complainant, constituting offence under Section 25 of Payment and Settlement Systems Act, 2007.

5. The offence under Section 25 of Payment and Settlement Systems Act, 2007 is defined thus:-

"25. Dishonour of electronic funds transfer for insufficiency, etc., of funds in the account. –

1. Where an electronic funds transfer initiated by a person from an account maintained by him cannot be executed on the ground that the amount of money standing to the credit of that account is insufficient to honour the transfer instruction or that it exceeds the amount arranged to be paid from that account by an agreement made with a bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may

extend to two years, or with fine which may extend to twice the amount of the electronic funds transfer, or with both: Provided that nothing contained in this section shall apply unless-

a. the electronic funds transfer was initiated for payment of any amount of money to another person for the discharge, in whole or in part, of any debt or other liability;

b. the electronic funds transfer was initiated in accordance with the relevant procedural guidelines issued by the system provider;

c. the beneficiary makes a demand for the payment of the said amount of money by giving a notice in writing to the person initiating the electronic funds transfer within thirty days of the receipt of information by him from the bank concerned regarding the dishonour of the electronic funds transfer; and

d. the person initiating the electronic funds transfer fails to make the payment of the said money to the beneficiary within fifteen days of the receipt of the said notice.

2. It shall be presumed, unless the contrary is proved, that the electronic funds transfer was initiated for the discharge, in whole or in part, of any debt or other liability.

3. It shall not be a defence in a prosecution for an offence under sub-section (1) that the person, who initiated the electronic funds transfer through an instruction, authorisation, order or agreement, did not have reason to believe at the time of such instruction, authorisation, order or agreement that the credit of his account is insufficient to effect the electronic funds transfer.

4. *The Court shall, in respect of every proceeding under this section, on production of a communication from the bank denoting the dishonour of electronic funds transfer, presume the fact of dishonour of such electronic funds transfer, unless and until such fact is disproved.*

5. *The provisions of Chapter XVII of the Negotiable Instruments Act, 1881 (26 of 1881) shall apply to the dishonour of electronic funds transfer to the extent the circumstances admit.*

Explanation.- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability, as the case may be."

6. It may be noted that there is a similar penal clause contained in Section 138 of Negotiable Instruments Act, 1881 also for dishonor of cheque, the prime difference between the two being that in the case of former, the dishonor, which is the subject matter of the offence, is of electronic funds transfer rather than that of cheque as in the case of latter.

7. Pertinent to note here that by virtue of Section 25 (5) of the Payment and Settlement Systems Act, 2007, the provisions of Chapter XVII of the Negotiable Instruments Act, 1881, apply to the dishonor of electronic funds transfer. Section 27 of Payment and Settlement Systems Act, 2007 is a provision similar to the one contained in Section 141 of Negotiable Instruments Act, 1881, on the subject of offences by companies, and reads thus:-

"27. Offences by companies.—(1) Where a person committing a contravention of any of the provisions of this

Act or any regulation, direction or order made thereunder is a company, every person who, at the time of the contravention, 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 guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any regulation, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place 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 contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(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.

8. The petitioner challenges the maintainability of the proceedings in the criminal complaint case primarily on the ground that the

cheques, and the instructions for RTGS transfer, were issued not by her but under the signatures of Manish Kumar Jain (the third person shown in the array of accused in the criminal complaint), he not having been summoned as accused. It is her contention that since she is not the person who had “initiated” the payment of the amount of money by electronic funds transfer, she cannot be hauled for such criminal prosecution. She places reliance on decisions of the Supreme Court reported as *Jugesh Sehgal vs. Shamsher Singh Gogi* (2009) 14 SCC 683 and *Aparna A. Shah vs. Sheth Developers Pvt. Ltd. & Anr.* (2013) 8 SCC 71. She argues that the complainant has been “aware” that the instruments were signed by the said Manish Kumar Jain and not by her and further that “admittedly” she was “neither in charge of nor responsible for the affairs of the company”. She has pleaded that she is a housewife, being mother of two small children, the presiding officer of the criminal court having acted with bias, non-bailable warrants having been unreasonably issued against her, it not being appreciated that she had appeared on the very first date through counsel pursuant to the summons.

9. The attention of the counsel for the petitioner was drawn to the averments in the criminal complaint to the effect that the cheques in question had been issued under her signatures, this being supported by the affidavit of the complainant, adduced at the preliminary inquiry. She was asked to clarify as to on what basis it was pleaded that the complainant was “aware” that the said instrument had been issued under the signatures of the other person (Manish Kumar Jain). The

counsel would not come with a clear reply, she being evasive. The counsel was asked as to whether a question of fact arising from such pleadings can be addressed in an inquiry under Section 482 Cr.P.C. The counsel would not respond, her insistence being that the petitioner was neither in charge of nor responsible for the affairs of the company. In this context, she was also asked to clarify as to on what basis it has been pleaded that the petitioner was “*admittedly*” neither incharge of nor responsible for the affairs of the company. The counsel submitted that such pleadings appearing in para 2 (q) are a case of “*bad drafting*”.

10. In the considered view of this Court and in the facts and circumstances of this case, such pleadings cannot be explained only as bad drafting, they instead being designed to mislead.

11. Be that as it may, it is the case of the petitioner herself that M/s Shrey Overseas is a firm of which she is the proprietor. Manish Kumar Jain is described by her as her brother-in-law (brother of the husband). It is her defence that the firm is being run and managed by the said relative. The fact, however, remains that she is the proprietor of the business. In these circumstances, the provision contained in Section 27 of the Payment and Settlement Systems Act, 2007 stands attracted. Since the proprietor of a business of such nature has to be assumed to be the person in charge of and responsible for the conduct of its business, she cannot escape the prosecution for the offence under Section 25 of the Payment and Settlement Systems Act, 2007, it being a matter of logical inference that the instruments with instructions for

RTGS transfers of money would have been issued at her instance and on her behalf.

12. The copy of the proceedings recorded in the court of Metropolitan Magistrate reveal that the petitioner has been guilty of evading the process of law. The summons to the petitioner had been issued calling her upon to appear as an accused in terms of order dated 19.05.2015. The said summons sent by registered post to her were returned with the remarks “*refusal*”. Taking note of this, the Metropolitan Magistrate, by his order dated 13.08.2015, opted to issue bailable warrant against her for 05.10.2015. It may be noted that after the said order had been passed, an advocate on instructions from the petitioner appeared seeking exemption on her behalf on the ground of ill-health. The Metropolitan Magistrate recalled the coercive process but subject to production of medical records on the next date.

13. On 05.10.2015, another application was moved by the petitioner seeking exemption on the ground of fever. The Metropolitan Magistrate was not satisfied with the said grounds or the documents filed therewith. The exemption was granted appearance was directed for 30.11.2015, for furnishing of bail bonds and submissions on notice. Again on 30.11.2015, the petitioner would not appear. She sought adjournment through a proxy counsel on the ground of bereavement in the family, no details, however, having been showed. The request was declined and the Metropolitan Magistrate directed non-bailable warrant to be issued against the petitioner for 01.02.2016.

14. The petitioner challenged the aforesaid order by CrI. M.C. 5004/2015 in this Court. The petition was disposed of by a learned single judge of this Court, by order dated 10.12.2015, imposing cost of Rs.5,000/- upon the petitioner though giving her protection against arrest till the next date of hearing before the trial court (*i.e.*, 01.02.2016), calling her upon to seek bail (order) from the court concerned. Instead of appearing and obtaining release on bail to regulate her presence, the petitioner approached this Court by the petition at hand.

15. Having filed this petition and having obtained protection by order dated 09.02.2016, the petitioner has tried to evade the hearing, protracting the proceedings herein unnecessarily. The second respondent had file reply and the matter was listed to be heard for arguments on 08.09.2016. Adjournment was taken for rejoinder to be filed. When the matter came up for final disposal on 10.02.2017, another adjournment was taken. Rejoinder was filed belatedly and the matter had to be again adjourned on 25.07.2017. Thereafter, adjournments have been sought for arguments to be advanced by the counsel for the petitioner on several dates. Today, when the matter was called out, similar effort was made to seek yet another deferment. The counsel appeared only after the proxy was reminded that there is a caution administered in the cause list that no request for adjournment would be entertained in matters of 2016 vintage.

16. The petition is wholly devoid of substance. The petitioner has been successful in evading the process before the criminal court over

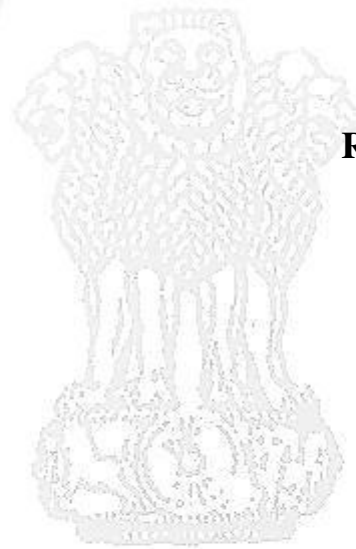
the last four years. In these circumstances, this Court is of the view that the petition itself is an abuse of the process of law.

17. For the foregoing reasons, the petition and the application filed therewith are dismissed with costs of Rs.50,000/- to be deposited with the Delhi High Court Legal Services Authority within a week hereof. The amount, if not deposited, to be recovered by the Metropolitan Magistrate as if it were fine imposed on the petitioner.

R.K.GAUBA, J.

MARCH 12, 2019

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