

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

Reserved on : 29.11.2019
Pronounced on : 27.05.2020

+ **CRL.M.C. 5942/2019 & CRL.M.A. 40857/2019**

SHRI RAJESH KUMAR GULATI Petitioner

Through: Mr. M. Dutta and Mr. Aditya Guha,
Advocates.

versus

NATIONAL AGRICULTURAL & ANR.

..... Respondents

Through: Mr. Aaditya Vijaykumar, Ms.
Mishika Choudhary and Mr.
Divyanshu Bhandari, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

CRL. M.A. 40856/2019

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL.M.C. 5942/2019 & CRL.M.A. 40857/2019

1. The petitioner has filed the present petition for quashing of the criminal complaints bearing No. 970/2017, 2654/2018, 1653/2017, 1654/2017 and 1463/2018 U/s 138 of the NI Act pending before Ms. Amardeep Kaur, Metropolitan Magistrate, Patiala House Courts, Delhi.

2. In brief, the facts of the case are that the respondent No. 2 company is engaged in trade and trading of various minerals and food-grains which are purchased from different countries. The petitioner was appointed a Director in the affairs of respondent No. 2 on 1.11.2003 and continued till 18.06.2010 when he tendered his resignation and completed all the formalities with the Registrar of Companies.

3. It is averred that pursuant to the agreement(s) between respondent No. 2 company and the respondent No. 1, respondent No. 2 company availed certain financial assistance from respondent No. 1. The repayments were scheduled to be provided in accordance with the agreed terms, as recognized in the Letters of Credit, opened by respondent No. 1 in favour of their beneficiaries. Towards its existing liabilities, the respondent No. 2 company provided 35 cheques at a value of Rs. 5.00 Crores each. Owing to the defaults committed by the beneficiaries and the beneficiary bank, respondent No. 2 company was unable to recover their dues.

4. On presentation, the cheques held by respondent No. 1 as collateral security were dishonoured. Subsequent to the dishonour of these cheques, respondent No. 1 filed various complaints U/s 138 N.I. Act against respondent No. 2 company and its directors for dishonour of such cheques. The petitioner was also impleaded as accused in those proceedings, for being a Director of the respondent No. 2 company between 01.11.2003 to 18.06.2010.

5. During the pendency of the complaints, a sum of Rs. 22.35 crores was released by respondent No. 2 company in favour of respondent No. 1. On

release/receipt of the aforesaid amount of Rs. 22.35 crores, the respondent No. 1 agreed to return 5 cheques of Rs. 5.00 Crores each and withdrew all the proceedings filed by them U/s 138 NI Act.

6. The Officer(s) of respondent No 2 company moved the Hon'ble Supreme Court with the prayer that all the pending criminal complaints U/s 138 and other provisions of NI Act be listed before one Court. The Hon'ble Supreme Court vide order dated 28.03.2018 was pleased to direct all such cases to transfer and listed and tried by one Court. It is averred that during the pendency of the complaints, the respondent No. 2 company discovered that respondent No. 1 had received a sum of 5 Million US Dollars from one of the debtor(s) of respondent No. 2 Company. The receipt of such amount by respondent No. 1 is duly recorded and accepted in the charge sheet filed by the CBI dated 23.12.2009.

7. Based on the aforesaid investigation report of the CBI, respondent No. 2 company and its directors filed an application before the court of Ld. MM praying that the cheque(s) for the equivalent amount may be returned to respondent No. 2 company and corresponding criminal complaint(s) be duly withdrawn/dismissed.

8. The Ld. MM vide order dated 30.08.2018 dismissed the application of the petitioner, observing that there was nothing on record to show that amount so received by respondent No.1 was with respect to the cheque(s) in dispute.

9. It is averred that a sum of Rs. 5 million US Dollars admittedly received by respondent No. 1 must be deducted from the total outstanding of respondent No. 2 company which would lead to a reduction of respondent No. 2 company's debt and in the absence of any debt no recovery proceedings U/s 138 of the NI Act can lie.

10. The counsel for the petitioner has argued on the lines of his petition. His main thrust of argument is that since respondent No. 1 admittedly received a sum of Rs. 5 million US Dollars from one of the debtors of the respondent No. 2 company, therefore, after adjustment of this amount, no debt is left and 5 complaints U/s 138 NI Act are liable to be quashed.

11. The counsel for the respondent No. 1 who appears on advance notice submits that firstly, there is no infirmity in the order dated 30.08.2018 passed by the Ld MM wherein it has been observed that the amount so received by respondent No. 1 was not with respect to the cheques in dispute. Secondly, it is contended that, the respondent No. 2 company had approached the Hon'ble High Court in CRL.M.C. 4065/2019 and Crl. M.As 33718-33719/2019 in which when the Court was not willing to grant any relief, the petition was ultimately withdrawn. He further submits that it is the settled law that it is the discretion of the creditor to apply the money so received to any lawful recoverable debt. He further argued that there was no such directions from the side of the respondent No. 2 company of whose petitioner is one of the directors, to apply the sum of 5 million US Dollars to a particular debt, more specifically against the cheques in respect of which the complaints U/s 138 NI Act are pending.

12. **Section 60 of the Indian Contract Act, 1872 reads as follows :**

“60. Application of payment where debt to be discharged is not indicated.- Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitations of suits.”

13. In the instant case, though admittedly, an amount of 5 million US Dollars have been received by respondent No. 1 from M/s Roseberry Global FZE, Sharjah, who according to the petitioner is one of the debtor(s) of respondent No. 2 company but there is nothing on record to suggest that there were any such directions from the side of respondent No. 2 company to apply the said amount so received against the cheques in question in respect of which the complaints are pending.

14. Liability against the respondent No. 2 company is around 14 Hundred Crores and the cheque(s) amount are only part of the money payable by the respondent No. 2 company. Moreover, in view of Section 60 of the Indian Contract Act, in a case, where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, it is the discretion of the creditor to adjust the payment against any lawful debt actually due and payable to him from the debtor.

15. Moreover, as already discussed hereinabove, there is nothing on record to suggest that there were any specific directions by the respondent

No. 2 company qua adjustment of this amount so received by respondent No. 1 against the cheque(s) amount in respect of which the complaints are pending.

16. It is also pertinent to mention here that respondent No. 2 company had once approached this Court in this regard and the present litigation appears to be a second round of litigation in respect of the same cause. Therefore, in view of the discussions mentioned hereinabove, the present petition does not call for issuance of notice to the respondents being merit less, the same is, therefore, dismissed and Crl.M.A. 40857/2019 is also disposed of accordingly.

RAJNISH BHATNAGAR, J

MAY 27, 2020

Sumant

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