25 akb

28.08
2024
Ct. No. 237

C.R.R. 3332 of 2017
Hershey India Pvt. Ltd. & Ors.
Vs.
Millennium Cyberworks
Prop. Francies Klien & Co. Pvt. Ltd.

Mr. Sandipan Ganguly
Mr. R.K. Khanna
Ms. Manaswita Mukherjee
Mr. Aman Khemka ...*For the Petitioner No. 1,2,3&5*

Mr. Meghajit Mukherjee
Ms. Srijeeta Gupta
Ms. Sonia Das ...*For the Opposite Party*

This is an application, wherein the petitioners have prayed for quashing of proceedings of Complaint Case No. C/22578 of 2010 filed under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, (in short N.I. Act) pending before learned Metropolitan Magistrate, 16th Court, Calcutta, (Presently redesignated as Judicial Magistrate, 16th Court, Calcutta).

The petitioners herein have contended that none of the petitioner Nos. 2 to 4 were in-charge of or responsible for the day to day conduct of the business of the erstwhile Godrej Hershey Ltd. and they were only responsible for the policy making strategic planning and the like.

The gist of the allegations made in the complaint is that in discharge of their existing liabilities in part in respect of Laptop Computers sold and supplied, vide Tax Invoice No. MCW/2390/09-10 dated 20th November, 2009 amounting to Rs. 2,40,240/- one account payee cheque being No. 007569 dated 15th February, 2010 for Rs.

1,36,000/- drawn on ICICI Bank, New Alipore Branch, which was signed by Sandeep Mohan Razdan, the accused No. 6 (who is not the petitioner herein) in favour of the Complainant's Company was issued and the same was dishonoured on 20th May, 2010 and for which purported legal notice dated 18th June, 2010 was sent asking for payment of said amount but no payment was made and on the contrary a reply was sent by the accused No. 2 to 4 making some frivolous allegations denying liability to make payment.

It is submitted on behalf of the petitioners that said Sandeep Mohan Razdan, Pradyut Bhowmick and several distributors of tea and some unknown persons entered into criminal conspiracy and committed several criminal offences punishable under the provisions of the Indian Penal Code and Godrej Hershey Ltd. / the petitioner No. 1 was constrained to initiate appropriate criminal proceedings against them.

It is further submitted that it was detected in between August, 2009 to December, 2009 that said Sandeep Mohan Razdan without obtaining any instructions from the petitioner No. 1 placed orders for large number of computers and/or laptops from several computer dealers in the name of petitioner No. 1/Company. All the payments for such illegal transactions were made by paying cash or issuing cheques from his personal account by Sandeep Mohan Razdan and none of the payments against the said computers/laptops supplies were made by the petitioner No. 1, Company. The laptops so procured were later on disposed of/sold away by Sandeep Mohan Razdan for his personal gain without any knowledge of the petitioner No. 1 herein.

Petitioners therefore submit that from the impugned cheque it clearly reveals that the impugned cheque was issued in the personal capacity from his personal savings bank account and as such company or its officials cannot have any responsibility for the said purchase nor they have any legally enforceable debt for issuing the said cheque and Section 141 of the N.I. Act has got no manner of application in the present context in the absence of specific averment to that extent in the petition of complaint. However, the complainant in his written complaint has entangled the officials also along with said accused No. 6 Sandeep Mohan Razdan. On being dis-satisfied with the said proceeding, the petitioners have prayed for quashing the said case.

In support of the said contentions, the petitioners have relied on the decisions in the case of ***Nopany Education Trust and Anr. Vs. State and Anr.,*** reported in **2013 SCC OnLine Cal 22783**; ***P.J. Agro Tech Ltd. & Ors. Vs. Water Base Ltd.,*** reported in **(2010) 12 SCC 146**; ***Mainuddin Abdul Sattar Shaikh Vs. D. Salvi,*** reported in **(2015) 9 SCC 622** and ***Jugesh Sehgal Vs. Shamsher Singh Gogi,*** reported in **(2009) 14 SCC 683;** ***SMS Pharmaceuticals Ltd Vs. Neeta Bhalla,*** reported in (2005) **8 SCC 89;** ***Ashok Shewakramani & Ors. Vs. Statge of Andhra Pradesh & Anr.*** reported in **(2023) 8 SCC 473;** ***Siby Thomas Vs. Somany Ceramics Ltd.,*** reported in **(2024) SCC 1 SCC 348;** ***Susela padmavathy Amma Vs. Bharti Airtel Ltd.,*** reported in **2024 SCC OnLine 311**

and *Shaleen Khemani Vs. State of W.B.,* reported in **(2018) CCrLr (Cal) 515.**

Against the submissions made on behalf of the petitioners, learned Counsel appearing on behalf of the opposite party submits that in view of the decision in the case of ***P.J. Agro Tech Ltd. & Ors. (Supra)*** the impugned proceeding might not lie against present petitioners but it should be allowed to continue against accused No. 6 who is drawyer of the cheque.

I have considered the submissions made on behalf of the parties. On perusal of the written complaint it appears that the complainant in the complaint has merely described the accused No. 1 as the Company, accused No. 2 and 3 are the Directors, accused No. 4 as the Additional Director and accused No. 5 as the Secretary and accused No. 6 as the Deputy General Manager. However it has also been specifically averred in the complaint that the accused No. 6 signed cheque in question.

It is well-settled that in the order issuing summons, the Magistrate has to record his satisfaction about a prima facie case against the present petitioners and the role played by them in their respective capacities which is since quo non for initiating criminal proceeding against them. On bare perusal of the averments and allegations made in the complaint there are no specific allegations or averment with respect to the petitioners' role played by them as officials, in the issuance of cheque. Without any specific role played by them in their capacity they cannot be arrayed as an accused, more particularly they cannot be held vicariously liable for the offence allegedly committed by accused no.6

Accordingly, it is very much clear from the averments as well as from the impugned cheque that Section 141 of the Negotiable Instruments Act does not attract in respect of the present petitioners. It has been clearly laid down in ***P.J. Agro Tech Ltd. & Ors. (Supra)*** that in order to attract Section 138 of N.I. Act a cheque which is dishonoured will have to be drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person from out of that account maintained by him for payment of any amount of money to another person from out of that account for the discharge in whole or in part of any debt or other liability. In the present case, company and its officials cannot be made liable under Section 138 read with Section 141 of the N.I. Act for act or misdeed, if any, done on behalf of accused No. 6 in his personal capacity and from his personal savings bank account. The said accused No. 6 is not the petitioner herein. In fact, the proceeding in the present matter is in person and cannot be used to foist an offence on the present petitioners, who are not the drawer of the impugned cheque.

In view of such discussions I find that present proceeding against the petitioners is not maintainable. In view of the matter C.R.R. 3332 of 2017 is allowed.

The proceeding being complaint Case No. C/22578 of 2010 presently pending before learned Judicial Magistrate, 16th Court, Calcutta, is hereby quashed quo the petitioners herein.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)