

Delhi High Court

Bhasin Credit Aid Ltd. vs Raj Kumar on 6 October, 2006

Author: S Aggarwal

Bench: S Aggarwal

JUDGMENT S.N. Aggarwal, J.

1. The appellant, M/s. Bhasin Credit Aid Ltd., has preferred this appeal by way of special leave against the impugned judgment dated April 24, 2004, passed by Shri A. K. Sarpal, then M. M, Delhi dismissing its complaint under Section 138 of the Negotiable Instruments Act (for short "N. I. Act") for absence of authorization in favor of Mr. M. L. Sharma, Manager (accounts) through whom the said complaint was filed.

2. The appellant is a company duly incorporated under the Companies Act, 1956. The respondent had issued a cheque to the appellant-company which when presented to the bank for encashment bounced. Notice of bouncing of the cheque was given by the appellant-company to the respondent and as the payment of the bounced cheque was not made despite service of notice, a complaint under Section 138 of the Negotiable Instruments Act was filed against the respondent through the appellant's manager (accounts) Mr. M. L. Sharma. The appellant filed a copy of a resolution Ex. CW1/7 along with the complaint to show authorization in favor of Mr. M. L. Sharma through whom the complaint was filed. The learned court below construed the said resolution as conferring no power on Mr. M. L. Sharma to institute the complaint under Section 138 of the Negotiable Instruments Act against the respondent. The view taken by the court below is that the aforementioned resolution authorized Mr. M. L. Sharma only to file a recovery suit for recovery of the amount of bounced cheque. As the court below was of the view that since the complaint filed was not by a duly authorized person, the complaint under Section 138 of the Negotiable Instruments Act was dismissed on that ground.

3. Learned Counsel for the appellant has argued that no authorization for filing a criminal complaint under Section 138 of the Negotiable Instruments Act was required and according to him, any person can set the criminal law into motion and therefore, it is urged that the court below committed an error in dismissing the complaint on the ground of absence of proper authorization.

4. Learned Counsel for the respondent has relied upon a judgment of the Supreme Court in BSI Ltd. v. Gift Holdings P. Ltd. [2000] 100 Comp Case 436 : [2000] 1 BC 292, and on the strength of the said judgment, he has contended that the word "suit" referred in resolution Ex. CW1/7 cannot be stretched to authorize Mr. M. L. Sharma to institute criminal prosecution against the respondent under Section 138 of the Negotiable Instruments Act. This judgment, in my opinion, is not applicable to the facts of the present case. The judgment in BSI Ltd.'s case [2000] 100 Comp Case 436 : [2000] 1 BC 292, lays down that when a company becomes sick then Section 22 of the SICA bars initiation of civil proceedings against a sick company without prior permission of the BIFR and the said bar does not apply to criminal prosecution.

5. The question for decision in the present case is whether the court below was justified in dismissing the appellant's complaint under Section 138 of the Negotiable Instruments Act on the

ground of absence of proper authorization in favor of Mr. M. L. Sharma through whom the said complaint was filed. The law, in this regard, is well-settled that anyone can set the criminal law in motion by filing the complaint constituting the offence. For the offence under the Negotiable Instruments Act, the only criteria prescribed by Section 142 is that it must be instituted by the payee or holder in due course. The fact that the complaint lodged by a manager or other employer who had not been authorized by the board of directors to sign and file the complaint cannot be a ground for quashing the complaint.

6. In the case of *Vishwa Mitter v. O. P. Poddar*, it was held by the hon'ble apex court that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a magistrate entitled to take cognizance. It was further held in the said case that no court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint.

7. In *M. M. T. C. Ltd. v. Medchl Chemicals and Pharma P. Ltd.* [2002] 108 Comp Case 48 (SC) : [2002] 1 RCR (Cr.) 318, the facts were almost similar as are in the present case. In *M. M. T. C. Ltd.'s* case [2002] 108 Comp Case 48 (SC) : [2002] 1 RCR (Cr.) 318, the complaint under Section 138 of the Negotiable Instruments Act was filed on behalf of MMTC through its employee Mr. Lakshman Goel who was later on substituted by Mr. Sampat Kumar, the deputy general manager. In that case, the complaint of MMTC was dismissed by the magistrate and aggrieved by that the company went in appeal before the High Court and the High Court took a view that the absence of a complaint by a duly delegated authority is not a mere defect or irregularity which could be cured subsequently. The High Court also took a view, in that case, that if the record does not disclose any authorization, then taking cognizance of the complaint was barred by Section 142(a) of the Negotiable Instruments Act. This judgment of the High Court was challenged by the company, MMTC, before the Supreme Court and the Supreme Court disagreeing with the aforementioned view of the High Court held as under (page 52):

In our view the reasoning given above cannot be sustained. Section 142 of the Negotiable Instruments Act provides that a complaint under Section 138 can be made by the payee or the holder in due course of the said cheque. The two complaints, in question, are by the appellant-company who is the payee of the two cheques.

8. I am of the view that the question raised in the present appeal is squarely covered by the aforementioned two judgments of the hon'ble Supreme Court in *M. M. T. C. Ltd.'s* case [2002] 108 Comp Case 48 (SC) : [2002] 1 RCR (Cr.) 318 and *Vishwa Mitter's* case [1984] 1 RCR (Cr.) 196 : 1984 SC 5. Since the complaint of the appellant under Section 138 of the Negotiable Instruments Act was dismissed by the court below only on the ground of absence of proper authorization in favor of Mr. M. L. Sharma, the impugned judgment of the court below cannot stand the test of judicial scrutiny. Hence, the impugned judgment is hereby set aside. This appeal is allowed. The case is remanded back to the trial court for decision on the merits as per law after hearing both the parties. The parties are directed to appear before the trial court for further directions at 2 p. m. on October 16, 2006.