

THE HIGH COURT OF MEGHALAYA

Crl. Petn.(SH) No. 24 of 2013

1. Shri. M/s Keshar Multiyarn Mill Ltd.,
A company registered under the Indian
Companies Act, 1956, having its regd.
Office at 6H, NICCO House, 6th Floor, 2 Hare
Street, Kolkata- 700001.
2. Shree Prateek Patodia,
S/o Pawan Kumar Patodia,
Resident of 3, Moira Street,
Kolkata-700017.
3. Shri. Mayank Patodia,
S/o Pawan Kumar Patodia,
Resident of 3, Moira Street, Kolkata-700017.
4. Smti. Shikha Patodia,
W/o Mayank Patodia,
Resident of 3, Moira Street,
Kolkata-70017.

All the above petitioners, for the purposes of the instant case,
are represented by Shri. Ashish Chiranewala, S/o (L) B Chiranewala,
resident of 2, Kali Krishan Tagodre Street, Kolkata-700007,
power of attorney holder.

... Petitioners

-Versus-

M/s Hotel Polo Towers Pvt. Ltd.,
Polo Hills, Shillong, East Khasi Hills, Meghalaya,
Represented by its Managing Director.

... Respondent

B E F O R E THE HON'BLE MR.JUSTICE S.R. SEN

Advocate for petitioner	:-	Mr. S Jindal
Advocate for the respondent	:-	Mr. BK Das
Date of hearing	:-	23.08.2013
Date of Judgment & Order	:-	27.08.2013

J U D G M E N T A N D O R D E R

The petitioner approached this Court by way of application
under Section 482 CrPC read with Article-227 of the Constitution of India.
The case in nut shell is that, the petitioner challenged the legality and

propriety of the proceeding in CR Case bearing No. 768 of 2012 pending before the Learned Court of Judicial Magistrate, First Class, Shillong.

2. Mr. S Jindal, the learned counsel appeared for on behalf of the petitioner argued that, CR Case referred above has not been filed within time. Secondly, the cheque has been issued by the petitioner No. 1, therefore, the petitioners No. 2, 3 & 4 are in no way liable, so no case lies against the petitioners No. 2, 3 & 4 and prayed that the entire proceeding may be quashed.

3. In support of his submissions, the learned counsel relied on ***“Municipal Corporation of Delhi vrs Ram Kishan Rohtagi and Ors. reported in AIR 1983 SC 67, Saroj Kumar Poddar vrs State (NCT of Delhi) and Anr. reported in (2007) 3 SCC 693, K. Srikanth Singh vrs North East Securities Ltd., & Anr. reported in (2007) 12 SCC 788, Central Bank of India and Anr. Vrs Saxonz Farms & Ors. reported in (1999) 8 SCC 221 and Dalmia Cement (Bharat) Ltd. Vrs Galaxy Traders & Agencies Ltd and Ors. reported in (2001) 6 SCC 463.”***

4. On the other hand, Mr. BK Das, the learned counsel appeared for on behalf of the respondent submitted that, CR Case in question was filed very much in time, so the first point raised by the petitioner’s counsel has no reason to stand to which the learned counsel for the petitioner himself agreed in reply.

5. The learned counsel further contended that, the petitioners No. 2,3 & 4 are equally liable as they are active Members of the company, and the proceeding of CR Case referred to above may not be interfered with.

6. In support of his submission, the learned counsel relied on ***N. Rangachari vrs Baharat Sanchar Nigam Limited reported in AIR 2007 SC 1682, SB Muzumdar & Ors. vrs Gujarat State Fertilizer Co. Ltd & Anr. reported in (2005) 4 SCC 173, and M/s MMTC Ltd. & Anr***

vs M/s Medchl Chemicals & Pharma (P) Ltd & Anr. reported in AIR 2002 SC 182.

7. On perusal of Lower Court case record at Page-17, it appears that the Sr. Postmaster informed the respondent counsel that, notice was delivered to the addressee on 14.05.12, it further appears to me that, the complaint petition was registered as CR Case No. 768 of 2012 on 25.06.12, therefore, the contention made in the application of the petitioner that, they have not received any notice has no leg to stand.

8. Section-138 of the Negotiable Instruments Act, 1881 made clear provision at Proviso under Clause (b) & (c) that, if any cheque is dishonored the affecting party is to issue notice within 30 days and thereafter the defaulter party to make payment within 15 days from the date of receipt the notice.

9. In this instant case, from the letter of the Postmaster as referred above, it is clear that notice has been delivered on 14.05.12 to the petitioner. So, as per law the petitioner was bound to make payment within 15 days i.e. w.e.f. 14.05.12. Since no payment has been made as alleged by the respondent, filed the case on 25.06.12. In my view, the complaint petition has been filed very much within time after fulfilling the pre-condition of law as incorporated in Section-138 of the Negotiable Instruments Act, 1881. Therefore, I do not see any reason to hold that the complaint petition filed by the complainant respondent is bad in law.

10. Now the question comes, whether at this stage this Court to decide that, the petitioners No. 2,3 & 4 are liable or not. In my view, this is not the stage to decide who is liable or who is not; that to be decided during trial by way of evidence. Therefore, at this juncture it will be difficult on my part to come to any conclusion from the materials placed before me that, the petitioners No. 2,3 & 4 are in no way liable as they are Members and Directors of the said petitioner's Company No. 1.

11. Therefore, I am unable to accept the arguments advanced by the learned counsel for the petitioner. In the case of ***M/s MMTC Ltd. & Anr vrs M/s Medchl Chemicals & Parma (P) Ltd & Anr. (DB Para-13) reported in AIR 2002 SC 182*** observed that:

“The learned Judge has next gone into facts and arrived at a conclusion that the cheques were issued as security and not for any debt or liability existing on the date they were issued. In so doing the learned Judge has ignored well settled law that the power of quashing criminal proceedings should be exercised very stringently and with circumspection. It is settled law that at this stage the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. At this stage the court could not have gone into the merits and / or come to a conclusion that there was no existing debt or liability.”

12. Therefore, considering the facts and circumstances of the case, I do not find any reason for this Court to interfere with the CR Case No. 768 of 2012 by invoking the power under Section 482 CrPC, hence, the petition is rejected and the matter stands disposed of.

13. Registry is directed to return the Lower Court case record to the Court concerned along with a copy of this Judgment and Order.

JUDGE

V. Lyndem.