



Riya Bawri Etc. v. Mark Alexander Davidson & ors. (SC)
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SUPREME COURT OF INDIA

Before: Hima Kohli & Rajesh Bindal, JJ.

Criminal Appeal No(s) 2510-2552 of 2023
(Arising out of S.L.P. (Crl.) No (s).7483-7525 of 2022)

Decided on: 23.08.2023

Riya Bawri Etc. - Appellant(s)

Versus

Mark Alexander Davidson & ors. - Respondent(s)

For Petitioner(s):

Mr. Raghenth Basant, Adv., Ms. Sonali Jain, Adv., Ms. Shagufa Salim, AOR

For Respondent(s):

Ms. Srishti Agnihotri, Adv., Mr. Abishek Jebaraj, AOR, Ms. Sanjana Grace Thomas, Adv., Ms. A. Reyna Shruti, Adv., Mr. D. P. Singh, Adv.

Negotiable Instruments Act, 1881 (26 of 1881), Section 138 -- Code of Criminal Procedure, 1973 (2 of 1974), Section 482 – Cheque bounce complaint – Retirement of partner – Public notice -- Quashing of summoning order and complaint -- Premises owned by the appellants was taken on rent by the respondent no.3/firm – Issuance of cheques for rent -- High Court quashed the summoning order and complaints against respondent no.1 accepting the plea that he had retired from the partnership firm – Held, plea not tenable, it would be a matter of evidence to be proved before the trial Court, as to whether any Retirement Deed was issued and a public notice concerning the same was issued, before the complaints were filed -- Not the case set up by the respondent no.1 that in the Partnership Deed he was a sleeping partner in the firm -- Retirement Deed could not be taken on its face value, and treated as clinching evidence to quash the complaints -- Order passed by High Court set aside -- Complaints revived.

(Para 14-21)

JUDGMENT

RAJESH BINDAL, J. –

1. Leave granted.

2. A common order¹ [¹Order Dated 14.03.2022.] passed by the High Court of Meghalaya at Shillong in a bunch of Criminal Petitions² [²Criminal Petition No(s). 35-56 of 2021 & No(s). 74-94 of 2021.] is under challenge in the present appeals. *Vide* aforesaid order, the High Court allowed the

Petitions filed by the respondents herein and quashed the Criminal Complaints filed by the appellants herein under Section 138 read with Sections 141 and 142 of the NI Act³ [³*Negotiable Instruments Act, 1881 (hereinafter as 'NI Act')*] along with Sections 420, 418, 417, 403, 409 and 406 of the IPC⁴ [⁴*Indian Penal Code, 1860 (hereinafter as 'IPC')*] filed before the Court of Additional Deputy Commissioner (Judicial), Shillong.

3. Briefly, the facts of the case available on record are that on 11.07.2015, respondent no.3⁵ [⁵*Respondent No.3 in the present appeal is Twelve Baskets, a registered firm.*] approached the appellant no.1⁶ [⁶*Appellant No.1 in the present appeal is Riya Bawri, also the Complainant before the Additional Deputy Commissioner (Judicial), Shillong*] to rent out her property situated at 13th Mile, G.S. Road. Tamulikuchigaon, Byrnihat, Ri Bhoi District, Meghalaya. According to the agreement, the property was rented for a consideration of ₹1,45,152/- (Rupees One Lakh Forty-Five Thousand One Hundred Fifty Two) per month including taxes. The rent was to be paid every month at Shillong. A Cheque bearing no. 001422 drawn on HDFC Bank, Kalapahar, Guwahati Branch was issued on 20.08.2019, by the respondent no. 3 to the appellant no. 1, for an amount of ₹1,45,152/-. The cheque was issued to discharge the liability for the payment of rent. Between April 2019 and October 2019, the respondent no.3 had issued multiple cheques⁷ [⁷*Refer to Table mentioned in Para 12 of this judgment*] (Total 22 cheques) to the appellants herein for discharging the liability for the payment of rent for different months. All the cheques were dishonoured by the bank with a return memo stating the reason therein as 'Funds Insufficient.' Subsequently, the appellant no.1, issued a written notice dated 09.12.2019 to the respondent no.3 under Section 138 of the NI Act, calling upon the respondent no. 3 to pay the amount of the cheques to the appellant herein.

4. After expiry of the period of 15 days, the appellant no.1 filed Criminal Complaints⁸ [⁸*Criminal Complaints No.55/2019, 58/2019, 78/2019, 35/2020, 67/2020*] against the respondents no. 1 to 4 under Section 138 read with Sections 141 and 142 of the NI Act³ along with Sections 420, 418, 417, 403, 409 and 406 of the IPC⁴ [⁹*Appellant No.2 in the present appeal is Rahat Bawri*]. Following that, other appellants, including appellants no. 2⁹, 3¹⁰ [¹⁰*Appellant No.3 in the present appeal is Payal Bansal*] and 4¹¹ [¹¹*Appellant No.4 in the present appeal is Rahat Bawri (HUF)*] filed similar Criminal Complaints¹² [¹²*Criminal Complaints No.53-54/2019, 56/2019, 59-61/2019, 66/2019, 73/2019, 75-77/2019, 36-37/2020, 68-71/2020*] (Total 22 Complaints) against the respondents. The learned Judicial Magistrate of the First Class, after perusing the statement of the complainant, took cognizance of the cases and issued summons to the respondents herein.

5. Aggrieved by initiation of proceedings in the criminal complaints, the respondent no.1¹³ [¹³*Respondent No.1 in the present appeal is Mark Alexander Davidson*] and the respondent no.2¹⁴ [¹⁴*Respondent No.2 in the present appeal is Sarita Harish Kanchan*], filed petitions under Section 482 of the CrPC¹⁵ [¹⁵*Code of Criminal Procedure, 1973 (hereinafter as 'Code')*] before the High Court seeking quashing of the summoning order and the criminal complaints filed against them. The High Court, after hearing both the parties, quashed the criminal complaints and set aside the summoning order in relation to the respondents no.1 and 2. The High Court held that the complainant/appellant no.1 had failed to produce sufficient evidence to hold them liable for prosecution.

6. The respondent no. 3¹⁶ [¹⁶*Respondent No. 3 is the firm, wherein Respondent No.4 is one of the Partner*] and respondent no.4¹⁷ [¹⁷*Respondent No.4 in the present appeal is Sachhidanand Kanchan*] didn't file any quashing petition seeking quashing of the criminal complaints.

7. The aforesaid order of the High Court is under challenge in the present appeals.

8. This Court while taking up the Special Leave Petitions on 23.08.2022, did not entertain the same *qua* the respondent no.2 i.e., Sarita Harish Kanchan and dismissed the same. As a result, thereof, the order passed by the High Court *qua* the respondent no.2 quashing the proceedings against her stands upheld. Notice was issued only to the respondent no.1, 3 and 4.

9. The learned counsel for the appellants argued that the respondent no.1 had asserted before the High Court that during the period when cheques in question were issued, he had already resigned from the partnership firm, for which a notice was duly issued. However, the appellants' argument is that a public notice announcing the retirement of the respondent no.1 as a partner was released for the first time on 09.02.2022, subsequent to the trial Court summoning the respondents. Till that point, there is no evidence on record to indicate that the respondent no.1 was not a partner of the firm. The Retirement Deed dated 01.04.2018 placed on record by the respondent no.1 to support his case is a self-serving document which ought to be proved during the course of evidence and cannot be accepted as conclusive in quashing proceedings. Further, learned counsel for the appellant argued that there exist allegations concerning the respondent no. 1, indicating his role as partner, being in-charge of and responsible for the affairs of the firm. Hence, the order passed by the High Court quashing the complaints filed against the respondent no.1, deserves to be set aside.

10. On the other hand, learned counsel for the respondent no.1 submitted that though, initially his client was a partner in the firm, however, at the time when the cheques were issued by the respondent no.3, he had already resigned from the partnership firm *vide* Retirement Deed dated 01.04.2018, thus, making him face the trial, would amount to misuse of the process of law. Consequently, after his retirement from the firm, the respondent no.1 had nothing to do with the affairs of the firm. Hence, the respondent no.1, not being the partner of the firm on the date the issuance of the cheques, cannot be held liable. The Retirement Deed was prepared and was executed on 01.04.2018. Thereafter, a public notice dated 09.02.2022 was also issued informing the public in general about his retirement from the firm. The Retirement Deed executed on 01.04.2018 between the partners was itself sufficient, of which the High Court had taken cognizance and quashed the proceedings against the respondent no.1, saving him from the misuse of the process of law. No special evidence was required to be lead in that regard.

11. We have heard the learned counsel for the parties and perused the relevant referred records.

12. It is a case in which the premises owned by Riya Bawri, Rahat Bawri and Payal Bansal, was taken on rent by the respondents for a consideration of ₹1,45,152/- per month (including taxes). To discharge their liability for payment of the rent, various cheques were issued in favour of the appellants, the details whereof are as under:

Sr. No.	Cheque No.	Date	Amount	In favour of
1.	001412	10.05.2019	₹ 1,54,037/-	Rahat Bawri
2.	001428	25.05.2019	₹ 94,500/-	Rahat Bawri (HUF)

3.	001416	20.06.2019	? 1,54,037/-	Riya Bawri
4.	001411	30.04.2019	? 1,54,037/-	Payal Bansal
5.	001413	20.05.2019	? 1,54,037/-	Riya Bawri
6.	001429	25.06.2019	? 94,500/-	Rahat Bawri (HUF)
7.	001415	10.06.2019	? 1,54,037/-	Rahat Bawri
8.	001414	30.05.2019	? 1,54,037/-	Payal Bansal
9.	001417	30.06.2019	? 1,54,037/-	Payal Bansal
10.	001418	10.07.2019	? 1,45,152/-	Rahat Bawri
11.	001421	10.08.2019	? 1,45,152/-	Rahat Bawri
12.	001430	25.07.2019	? 94,500/-	Rahat Bawri (HUF)
13.	001420	30.07.2019	? 1,38,802/-	Payal Bansal
14.	001419	20.07.2019	? 1,45,152/-	Riya Bawri
15.	001422	20.08.2019	? 1,45,152/-	Riya Bawri
16.	001424	10.09.2019	? 1,45,152/-	Rahat Bawri

17.	001423	30.08.2019	? 1,38,802/-	Payal Bansal
18.	001425	20.09.2019	? 1,45,152/-	Riya Bawri
19.	001426	30.09.2019	? 83,765/-	Payal Bansal
20.	001433	25.10.2019	? 94,500/-	Rahat (HUF) Bawri
21.	001434	15.10.2019	? 2,29,317/-	Rahat (HUF) Bawri
22.	001432	25.09.2019	? 94,500/-	Rahat (HUF) Bawri

13. On presentation for collection to the Bank, the aforesaid cheques were returned by the Bank, with the remarks 'Funds Insufficient'. Immediately, thereafter the appellants issued a notice dated 09.12.2019 under Section 138 of the NI Act, to which no reply was given. As the cheques had been issued to discharge the liability for payment of the rent and the same were dishonoured, complaints were filed before the Additional Deputy Commissioner (Judicial) at Shillong under Sections 138, 141 & 142 of the NI Act and under Sections 420, 418, 417, 403, 409 and 406 of IPC.

14. After considering the preliminary evidence led by the complaints, the trial Court summoned the accused/respondents.¹⁸ [¹⁸Mark Alexander Davidson and Sarita Harish Kanchan (proceedings against both of them were dropped by the High Court) along with Twelve Baskets and Sachhidanand Kanchan.] It was at this stage that the respondents no.1 and 2 filed petitions before the High Court praying for quashing of the summoning order and the complaints filed against them. The High Court *vide* common impugned order quashed the complaints and the summoning order against the respondents no.1 and 2.

15. The only issue which is required to be considered in the present appeals is as to whether the order passed by the High Court quashing the summoning order and the proceedings against the respondent no.1 was justified.

16. The plea raised by the respondent no.1 for seeking quashing of the proceedings before the High Court was that on the dates¹⁹ [¹⁹Refer to Table mentioned in Para 12 of this judgment] when the cheques were issued for discharging the liability for payment of rent for the premises taken by the respondent no.3, he had already retired from the firm and a Retirement Deed in that regard was executed on 01.04.2018.

17. It is not in dispute that the premises owned by the appellants was taken on rent by the respondent no.3 firm. Though Partnership Deed has not been placed on record before this Court, however, from para 42 of the impugned order of the High Court it is evident that the partnership firm consisted of three partners, namely, Mark Alexander Davidson and Sachhidanand Kanchan and the third one was not impleaded in any complaints as accused. To discharge the liability towards the payment of rent, various cheques were issued to the appellants. The cheques, when presented to the Bank, were dishonoured on account of insufficiency of funds.

18. The specific allegations made against the accused in the complaint, including the respondent no.1, were that they were incharge of and were responsible for the affairs of the respondent no.3 firm, for conduct of the business affairs of the firm. Thus, they were liable to be proceeded against and punished. The offence has been committed with the consent and connivance of the accused nos. 2 to 4, which included the respondent no.1.

19. The High Court had accepted the argument raised by the respondent no.1 and quashed the summoning order as well as the complaints against him, accepting the plea that he had retired from the partnership firm for which a Retirement Deed was already executed on 01.04.2018. In our opinion, the plea taken by the respondent no.1 seeking quashing of the summoning order and the complaints filed against him was not tenable, for the reason that, it would be a matter of evidence to be proved before the trial Court, as to whether any Retirement Deed was issued and a public notice concerning the same was issued, before the complaints were filed. The fact remains that, a public notice regarding retirement by the respondent no.1 from the firm was issued on 09.02.2022 i.e., much after the complaints had been filed and the summoning order had been issued by the trial Court on 05.02.2020. Even the quashing petitions were filed by the respondent no.1 in October 2021. The public notice was issued few days before the High Court decided the quashing petition on 14.03.2022. It is not the case set up by the respondent no.1 that in the Partnership Deed it is mentioned that he was a sleeping partner in the firm. Under such circumstances, the Retirement Deed dated 01.04.2018 sought to be produced by the respondent no.1 for quashing of the summoning order and the complaints could not be taken on its face value, and treated as clinching evidence to quash the complaints. It would be a matter of evidence to be led before the trial Court.

20. It is well settled that the final judgment of the trial Court will depend on the evidence adduced before it. As there are specific allegations against the respondent no.1 in the complaint and he was admittedly a partner in the partnership firm when the rent deed was executed, he is liable to face prosecution. Powers under Section 482 of the Code can be exercised by the High Court in case when it comes across unimpeachable and incontrovertible evidence to indicate that the partner of the firm did not have any concern with the issuance of cheques. The case in hand is not of that kind.

21. For the reasons mentioned above, we find merit in the present appeals. The impugned order passed by the High Court quashing the summoning order and the complaints against the respondent no.1 are set aside. The complaints filed by the appellants against the respondent no.1 are revived to be tried by the Court concerned. The appeals are accordingly allowed.

Appeals allowed.

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