

SUPREME COURT OF INDIA

Everest Advertising Pvt. Ltd

Vs.

State, Govt. of NCT of Delhi

Crl.A.No.520 of 2007

(S.B. Sinha and Markandey Katju JJ.)

10.04.2007

JUDGMENT

S.B. SINHA, J:

1. Leave granted.

This appeal is directed against a judgment and order dated 13.07.2005 passed by a learned Single Judge of the Delhi High Court in Criminal M.C.

Nos. 3690 and 3691 of 2001.

Respondent Nos. 2 and 3 herein are Chairman and Managing Director of a Company known as 'Dalmia Industries Ltd.', (The Company) which is registered and incorporated under the [Companies Act, 1956](#). It was arrayed as Accused No. 6 in the complaint petition.

The Company is engaged in the business of advertising and publicity.

By an agreement dated 17.07.1995, the Company as also Accused No. 6 entered into an agreement in terms whereof the Company was appointed as advertising and publicity agents of Accused No. 6 in respect of their various products on the terms and conditions contained therein. Allegedly, the Company carried out various jobs and releases between the period July, 1997 and December, 1997. It raised bills to the extent of Rs. 2,59,21,053.37 for the work executed by it. On 14.11.1997, Accused No. 6 issued various post dated cheques allegedly towards part payment of the said dues which on presentation to the bank on 6.04.1998 admittedly were dishonoured. Notices were served on the Respondents Nos. 2 and 3 on 18.04.1998.

Appellant Company (Company) filed two complaint petitions against the accused persons including Respondent Nos. 2 and 3 herein alleging:

"4. That accused No. 1 to 5 are the Chairman, Vice Chairman, Director (Technical), Executive Director, and Senior General Manager (Finance) of the accused Company respectively and are Incharge and responsible to the accused company for the conduct of the business of the Company and are thus liable for making the payment.

*** ** 9. That the complainant company presented these cheques on 26.3.1998 for encashment through their bankers Central Bank of India, Ram Tilak Nagar Branch, New Delhi, which have been

returned back to the complainant company on 28.3.1998 by the Banker with the endorsement dated 27.3.1998 of the State Bank of Bikaner and Jaipur D 72 Connaught Circus, New Delhi to the bank of the accused company "payment stopped by the drawer". One of the cheque bearing No. 588184 dated 6.11.1997 drawn on the State Bank of Bikaner and Jaipur, D-72 Connaught Circus, New Delhi returned with the endorsement of the accused Bank "exceeds arrangement". This Bank Memo along with the cheque was sent by the Banker of the complainant company vide Memo dated 28.3.1998. Subsequently, the accused gave pay order in lieu of the cheque.

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11. That these post dated cheques as per Annexure 'B' were given after the accused No. 1 to 5 had various meetings with the complainant company and it is only after persuasion that the complainant company owes money to various Media Concessionais and unless they are being paid, the releases of the accused company shall not be entertained by the Media Concessionais.

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13. That accused No. 1 to 5 are Incharge and responsible for the conduct of the business and the offence is committed by the accused company with the active connivance of the accused No. 1 to 5."

On the said complaint petitions and upon recording the initial deposition of the complainant and its witnesses under Section 200 of the Code of Criminal Procedure, by an order dated 24.07.1999, processes were directed to be issued by the learned Magistrate against the accused persons in terms of Section 204 of the Code of Criminal Procedure.

An application was filed by them for recalling the processes so issued.

By an order dated 11.07.2001, the learned Magistrate recalled the said order dated 24.07.1999 issuing summons against Respondent Nos. 2 and 3.

Criminal Miscellaneous applications were filed by the Company thereagainst before the High Court. By reason of the impugned judgment, the said applications have been dismissed by the High Court holding:

"13. Coming back to the facts of the two cases before me, I find that the allegations in the complaint are far from sufficient to summon respondents 2 and 3 for the offence of the company - accused No.6. Apart from making an omnibus allegation that all the accused were responsible for the conduct of the business of the company and that all of them connived in the offence, there is no specific averment as to how any of the accused 1 and 2 (respondents 2 and 3 herein) were actually involved in the conduct of the business of the company relating to the transaction in question or how and on what basis it can be said that it was with the active connivance of these two accused that the offence was committed by the company.

In my opinion, the petitioners could not have been summoned on the basis of the allegations made by the complainant. The Metropolitan Magistrate has not committed any mistake in declining to summon the two accused. The petitions have no merit and, therefore, dismissed."

Mr. Alope Kumar Sengupta, learned Senior Counsel appearing on behalf of the Company, would submit that having regard to the allegations made in the complaint petition, the High Court

committed a serious illegality in passing the impugned judgment. The learned counsel submitted that the learned Magistrate had no jurisdiction to recall its order whereby the accused persons were summoned.

Mr. K.T.S. Tulsi, learned senior counsel appearing on behalf of Respondents Nos. 2 and 3, on the other hand, would submit that complaint petition contained mechanical reproduction of the wordings of a section and, thus, without making any allegation that Respondent Nos. 2 and 3 had any role to play in the matter of issuance of cheque or the dishonour thereof, no order issuing summons as against the said Respondents could have been passed. A distinction, according to the learned counsel, must be made between a Chairman of a Company and a Managing Director or a Deputy Managing Director thereof inasmuch whereas a Managing Director or a Deputy Managing Director is presumed to be involved in the day to day affairs of the Company, the Chairman of a Company may not even have any knowledge in relation thereto. Provisions of the Negotiable Instruments Act, it was submitted, are being misused and this Court, therefore, should strike a balance between the interest of a complainant and interest of an accused who is alleged to be vicariously liable for the offences committed by the Company.

Summons were issued by the learned Magistrate by reason of an order dated 24.07.1999. He recalled the said order. He did not have any jurisdiction in that behalf. A Magistrate does not have and, thus, cannot exercise any inherent jurisdiction.

In *Adalat Prasad v. Rooplal Jindal and Others* [(2004) 7 SCC 338], a 3-Judge Bench of this Court while overruling an earlier decision of this Court in *K.K. Mathew v. State of Kerala and Anr.* [(1992) 1 SCC 217] stated the law thus :

"14. But after taking cognizance of the complaint and examining the complainant and the witnesses if he is satisfied that there is sufficient ground to proceed with the complaint he can issue process by way of summons under Section 204 of the Code. Therefore, what is necessary or a condition precedent for issuing process under Section 204 is the satisfaction of the Magistrate either by examination of the complainant and the witnesses or by the inquiry contemplated under Section 202 that there is sufficient ground for proceeding with the complaint hence issue the process under Section 204 of the Code. In none of these stages the Code has provided for hearing the summoned accused, for obvious reasons because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provision in the Code. It is true as held by this Court in *Mathew* case¹ that before issuance of summons the Magistrate should be satisfied that there is sufficient ground for proceeding with the complaint but that satisfaction is to be arrived at by the inquiry conducted by him as contemplated under Sections 200 and 202, and the only stage of dismissal of the complaint arises under Section 203 of the Code at which stage the accused has no role to play, therefore, the question of the accused on receipt of summons approaching the court and making an application for dismissal of the complaint under Section 203 of the Code on a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage.

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16. Therefore, in our opinion the observation of this Court in the case of *Mathew*¹ that for recalling an erroneous order of issuance of process, no specific provision of law is required, would run counter to the scheme of the Code which has not provided for review and prohibits interference at interlocutory stages.

