

K.K. SINGHAL & ORS.

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v.

STEEL STRIPS LTD.

(Criminal Appeal No. 2546 of 2014)

DECEMBER 09, 2014

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[M.Y. EQBAL AND PINAKI CHANDRA GHOSE, JJ.]

Code of Criminal Procedure, 1973: s.482 – Dishonour of cheque – Criminal proceedings – Settlement between parties to the effect that complainant would withdraw criminal proceedings and appellant would make the payment – Allegation of cheating against appellant on the ground that appellant did not fulfill the terms of settlement – Summons – Application for quashing of summons – Dismissed by High Court – Challenged by appellant on the ground that Chandigarh Court had no territorial jurisdiction since the settlement between the parties was entered at Faridabad – Held: The agreement was entered into at Chandigarh to withdraw the criminal proceedings, the complainant having its head office at Chandigarh and further nowhere the appellants have made out a case that all the cheques were payable at Faridabad – Therefore, question of jurisdiction is of no consequence, which would be decided by the trial court – Interference with the order of High Court not called for.

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Dismissing the appeal, the Court

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HELD: It was contended for the appellant that Chandigarh Court had no territorial jurisdiction since the settlement between the parties was entered at Faridabad and the appellant having place of business at Faridabad, it is the court at Faridabad which would have jurisdiction. The contention that the Court at Chandigarh had no jurisdiction cannot be accepted. The agreement was entered into at Chandigarh to withdraw the criminal

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- A proceedings, the complainant having its head office at Chandigarh and further nowhere the appellants have made out a case that all the cheques were payable at Faridabad. Therefore, the question of jurisdiction is of no consequence, which would be decided by the trial court.
- B The second point, that the dispute is of civil nature, cannot be allowed to stand at this stage after taking into account the conduct of the appellants. [Paras 8 and 9] [242-C-D; 244-B-D]

- C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2546 of 2014.

From the Judgment & Order dated 27.05.2008 of the High Court of Punjab & Haryana at Chandigarh in CrI. Misc. No. 35963-M/2001.

- D Dr. Rajeev Dhawan, Siddharth Mittal, Abhinav Mukerji for the Appellants.

Nidhesh Gupta, Tarun Gupta, S.K. Verma for the Respondent.

- E The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. Leave granted.

- F 2. This appeal is directed against an order passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Misc. No. 35963-M of 2001, whereby the High Court dismissed the application filed by the appellants under Section 482 of the Code of Criminal Procedure for quashing the complaint filed under Sections 417, 418 and 420 read with Section 120-B of the Indian Penal Code and the summoning order dated 14.6.2001 passed by the Judicial Magistrate 1st Class, Chandigarh.

- H 3. The basis of the filing of the application relates to issuance of 33 cheques by the appellants during the course of its business aggregating to Rs.2,40,64,022.19 paise in

consideration of the payment against steel billets and rolled products supplied to them by the complainant/respondent. On presentation, all the cheques were dishonoured on different dates culminating in lodging of 26 complaints against the appellants for the commission of offence punishable under Section 138 of the Negotiable Instruments Act. Upon notice, the appellants filed an application under Section 482 of the Code of Criminal Procedure before the High Court for quashing the said complaints.

4. The appellants on 22.7.1998 requested the complainant that he had material worth Rs. 1 crore for disposal in the shape of forging of steel flanges which he would dispose of and would make the payment of the amount to the complainant and requested the complainant to find out a customer. At the request of the complainant, M/s. Uma Shanker Khandelwal and Company Limited, New Delhi agreed to purchase the material from the appellants. The appellants agreed to pay the entire consideration to the respondent and in turn directed the said company to pay the consideration directly to the complainant against all the deliveries. The appellants further promised to clear the balance outstanding by arranging funds from its source. Relying upon such allurements and inducement of the appellants, the respondent agreed to withdraw all the complaints except one. It appears as per promise, the appellants supplied flanges to said M/s. Uma Shanker Khandelwal and Company for an amount of Rs.31,22,524/- only and directed that the amount be paid directly to the respondent.

5. The appellants thereafter induced the respondent to withdraw the 25 complaints filed under Section 138 of the Negotiable Instruments Act, on the plea that the appellants would pay the entire consideration to the respondent. The appellants also withdrew the said application filed under Section 482 of the Cr.P.C. from the High Court. However, after withdrawal of all the complaints by the respondent, the appellants neither took any step to pay the amount nor kept his commitment.

A 6. In these circumstances, after recording the preliminary
 evidence, the trial court by an order dated 12.6.2001 issued
 summons against the appellants as accused for commission
 of offence under Section 420 of the Indian Penal Code. The
 appellants filed an application for quashing of the said
 B summons under Section 482 of the Cr.P.C.

C 7. Dr. Rajeev Dhawan, learned senior counsel appearing
 in support of this appeal first contended that the Judicial
 Magistrate, Chandigarh had no territorial jurisdiction since the
 agreement between the parties was entered into on 24.7.1998
 at Faridabad. He further contended that the appellants having
 its place of business at Faridabad, it is the Court at Faridabad,
 which would have jurisdiction. His basic structure of the
 submission was that the dispute is nothing but a civil dispute
 D and thereby jurisdiction lies at Faridabad. Secondly, he
 contended that since the dispute is of civil nature, the offence
 of cheating cannot be attracted in the facts of this case.
 According to him, there is no intention to deceive, therefore,
 the essential ingredients of the offence of cheating was not
 E present in this case. Thirdly, he submitted that it is based on
 breach of contract between the parties on the ground that the
 agreement was not performed. Therefore, it attracts the breach
 of contract and nothing else. Lastly, he contended that the
 appellant No.3 is an old man of 85 years, being the father of
 F appellant No.1 and further he had no involvement in the
 functioning of the company, which would be evident from his
 non-appearance at the time of agreement entered into between
 the parties on 24.7.1998.

G 8. On the contrary, Mr. Nidhesh Gupta, learned senior
 counsel appearing for the complainant/respondent drew our
 attention to the facts of the case and pointed out that right from
 the beginning, the appellants had the intention to induce the
 respondent to enter into a compromise despite the fact that they
 approached the Board of Directors, who passed the resolution
 H on 3.7.1998, and came to the conclusion that net worth of the

company has been eroded and has become a sick industrial company within the meaning of Section 3(1)(O) of Sick Industrial Companies (Special Provisions) Act, 1985 and passed a resolution only to by-pass their liability. Furthermore, the company unit was declared as sick on the one hand; on the other hand, they entered into a compromise dated 24.7.1993 and assured the complainant/respondent that they had the stock worth Rs. 1 crore. He contended that the said fact would attract Section 415 of the Indian Penal Code, 1860 which would show that the intention of the appellants is to cheat the respondent. He further pointed out that a complaint under Section 138 of the Negotiable Instruments Act against the company proceedings cannot be stayed since Section 22 or Section 22A of the Sick Industrial Companies (Special Provisions) Act has nothing to do with the criminal prosecution. He further pointed out that it was not the case of the appellants that the cheques, which were bounced, were payable at Faridabad only. Further, all the complaints were filed by the complainant under Section 138 of the Negotiable Instruments Act at Chandigarh, for the reason that the head office of the company is at Chandigarh and the compromise was also arrived at Chandigarh. On the basis of the compromise, the complaints under Section 138 of the Negotiable Instruments Act were withdrawn from the Court at Chandigarh. Therefore, according to him, the question of jurisdiction as raised by the appellants, is of no consequence and the same will be decided by the trial court during the trial. He further pointed out that the motive and conduct of the appellants was mala fide and hence he narrated that the appellants tried to deceive the complainants in a planned way, to get rid of the criminal liability and decided to move to BIFR under Sick Industrial Companies Act thereby avoiding civil liability. Each and every steps of the appellants is nothing but calculated and with an intent to deceive the respondent/complainant. Hence, he submitted that the High Court correctly dismissed the petition filed under Section 482 of Cr.P.C.

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- A 9. Having heard the learned counsel for the parties and after weighing the material placed before us, we cannot accept the contention of Dr. Dhawan that the Court at Chandigarh had no jurisdiction. It appears that on the question of territorial jurisdiction, the submissions made on behalf of the respondent/
 B complainant have substance. In our opinion, the agreement was entered into at Chandigarh to withdraw the criminal proceedings, the complainant having its head office at Chandigarh and further nowhere the appellants have made out a case that all the cheques were payable at Faridabad.
 C Therefore, we do not have any hesitation to hold that the question of jurisdiction is of no consequence, which would be decided by the trial court. The second point, which was urged by Dr. Dhawan that the dispute is of civil nature, cannot be allowed to stand at this stage after taking into account the
 D conduct of the appellants.

- E 10. We do not find any reason to accept the contention of Dr. Dhawan on the ground that the intention of the appellants is absolutely clear from their actions, which they followed to allure the complainant to withdraw the 25 complaints filed by them under Section 138 of the Negotiable Instruments Act. We do not wish to express our views further, but we are not in a position to accept such contention of Dr. Dhawan and further
 F the question of non-performance of the contract tentamounts to breach of contract as sought to be stated by Dr. Dhawan, also cannot be accepted in the teeth of the facts placed before us at this stage.

- G 11. Accordingly, we do not find any reason to interfere with the orders passed by the High Court. We find no merits in the appeal. The appeal is dismissed. The Trial Court shall decide the matter in question without being influenced, in any manner whatsoever, by the observations made by us.

Devika Gujral

Appeal dismissed.

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