

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : NEGOTIABLE INSTRUMENT ACT, 1881

CrI. M C No. 594/2008

Date of Decision : December 03, 2008.

BHUSHAN STEEL and STRIPS LTD. AND ORS. Petitioners
Through Mr. Mohit Mathur with Mr.
Vikram Panwar, Advocates

versus

STATE AND ANOTHER
Respondents
Through Mr. Manohar Lal, Advocate

REKHA SHARMA, J (Oral)

1. A cheque bearing no. 596871 dated May 8, 2001 for Rs.17,93,462/- drawn on State Bank of India was issued in favour of petitioner no. 1 by respondent no. 2. The cheque on presentation was returned un-encashed by the Bank as there were instructions from respondent no. 2 to stop payment of the cheque. Pursuant thereto, on July 3, 2001, petitioner filed a criminal complaint under section 138 of the Negotiable Instrument Act, 1881 against respondent no.

2. In the complaint so filed, summons were issued to respondent no. 2 who in response thereto appeared in the Court of the concerned Metropolitan Magistrate on May 20, 2003 and is facing trial. Besides filing the criminal complaint, on September 8, 2003, petitioner also filed a civil suit against respondent no. 2 under Order XXXVII of the Code of Civil Procedure being suit no. 1886/2003 titled Bhushan Steel and Strips Limited and Others Versus State and another for the recovery of the cheque amount. On July 29, 2004 the suit was decreed in his favour as respondent no. 2 failed to enter appearance within 10 days of the service of the summons. Nearly, one year after the service of summons upon respondent no. 2 in respect of the aforementioned criminal complaint, he too filed a criminal complaint against the petitioner under sections 403/406/420/IPC. In the meanwhile, petitioner no. 1 moved for the execution of the decree passed in its favour in the civil suit in which this Court ordered attachment of property of respondent No.2 situated at 460, Mundaka Village, Main Rohtak Road, Delhi. The respondent on the other

hand filed an application under Order XXXVII, Rule 4 of the Code of Civil Procedure seeking setting aside of the decree passed in the suit. The said application was considered on merits and was dismissed by a speaking order on March 1, 2006. The respondent then filed an appeal being RFA (OS) No. 17/2006 which too was dismissed by this Court on May 18, 2007. Having failed to obtain a favourable order in the civil suit and having further failed to get the decree set aside resulting in the attachment of the property, respondent undertook to pay the decretal amount to the petitioner and sought some time to prepare a schedule for payment and in the meanwhile, paid a sum of Rs. 1 lac. The petitioners are aggrieved by the order of summoning dated August 26, 2006 passed against them by the Court of the concerned Metropolitan Magistrate on the criminal complaint of respondent no. 2 under sections 403/406/420 IPC. It is submitted by learned counsel for the petitioners that the aforesaid complaint has been filed against the petitioners as a counter-blast to the criminal complaint and the civil suit filed by the petitioners against him. It is also submitted that there is no merit in the complaint of respondent No.2 otherwise, respondent no. 2 would not have made payment of Rs. 1 lac towards satisfaction of the decree passed in the civil suit and would not have taken time to prepare a schedule for further payment though no such schedule was prepared. It is therefore prayed that the criminal complaint against the petitioner be quashed. Having heard learned counsel for the parties, I find merit in the submissions of learned counsel for the petitioners. A perusal of the complaint filed by respondent no. 2 against the petitioner which has been annexed along with the petition goes to show that the petitioners allegedly misused and misappropriated the cheque in question in the month of May, 2001. If it was so, respondent no. 2 ought to have preferred a complaint soon thereafter, but he chose to keep quiet and filed the complaint nearly one year after the petitioners had filed a criminal complaint against him and seven months after the filing of the civil suit against him. This, in my view, was an attempt on the part of respondent no. 2 to thwart the complaint of the petitioners filed against him. It does not appear to be a bona fide complaint specially when after the civil suit was decreed in favour of the petitioners, respondent no. 2 paid a sum of Rs. 1 lac towards the decretal amount. For the foregoing reasons, I accept the petition and quash the summoning order dated August 26, 2006. The petition is disposed of.

Sd./-
REKHA SHARMA, J.

DECEMBER 03, 2008