

Delhi District Court

In Re vs Amrit Pal Singh Bedi on 16 December, 2020

IN THE COURT OF MR. DHARMESH SHARMA PRINCIPAL
DISTRICT & SESSIONS JUDGE : WEST DISTRICT
TIS HAZARI COURTS : DELHI

Criminal Revision No. 98/2020 CNR
No. DLWT01-001903-2020

In re:

Sumit Bhasin

S/o Ajit Singh Singh Bhasin R/o J-
11/75, Rajouri Garden,

New Delhi-110027..... Petitioner/revisionist

Versus Amrit

Pal Singh Bedi S/o Sh.

K. S. Bedi,

R/o J-3/3, Rajouri Garden,

New Delhi-110027..... Respondent

Date of Institution	:	07.03.2020
Date of hearing arguments	:	12.11.2020
Date of Order	:	16.12.2020

Appearances:

Sh. Mandeep Singh Vinaik, Sh. Deepak Bashta and Ms. Ragini Vinaik, Advocates, for the
petitioner/revisionist.

Sh. Sonal Anand and Mr. Aayush Sai, Advocates for the respondent/ complainant.

ORDER

1. This order shall decide a criminal revision petition preferred under Section 397 Cr.P.C. filed by the petitioner / revisionist on being summoned to face proceedings under Section 138 of Negotiable Instrument Act, 1881 (for short referred to as 'N.I. Act'), vide order dated 29.08.2019 passed by the court of Ms. Neha Pandey, learned Metropolitan Magistrate-03 (N.I. Act), West District, Tis Hazari Courts, Delhi, in complaint case bearing CC No. 6735/18 titled Amrit Pal Singh Bedi vs. M/s International Trenching Pvt Ltd & ors.

FACTUAL BACKGROUND

2. Briefly stated, it is the case of the complainant, who is respondent in the present revision petition, that accused NO.1 is a Private Limited Company engaged in the business of trenching / fibre optic laying and allied services; and that accused NO.2- Guneeet Bhasin and accused no.3-Sumit Bhasin were its director while accused no.4- Ms. Summy Bhasin has been handling its day to day operations alongwith other accused. He alleged that accused were personally known to him and shared a cordial relations and they approached him sometimes in January, 2018 seeking his services in the

upcoming project of the accused company, and accordingly the complainant provided services to the accused persons from time to time which amounted to Rs.44,60,000/-, that was agreed to be paid on behalf of accused NO.1 on or before 15.07.2018 but accused nos. 2 to 4 failed to make timely payment and so they entered into a Memorandum of Undertaking dated 26.07.2018 vide which, the accused agreed to pay a sum of Rs.47,53,519/- to the complainant on or before 27.02.2019.

3. It is then the case of the complainant that on 19.01.2019, accused nos. 2 to 4 issued a cheque of Rs.47,53,519/- dated 15.04.2019 bearing no. 000192 drawn on HDFC Bank Ltd, Rajouri Garden, Delhi under the signature of accused NO.2 in his favour after executing the confirmation letter whereby unequivocally acknowledging their liability vide letter dated 19.01.2019 and sought time till 01.07.2019 to make payment. To cut the story short, the cheque was presented for encashment on 03.07.2019 but it was returned dis-honoured by his banker i.e. Syndicate Bank, Rajouri Garden, Delhi for the reason "Account Blocked" vide memo dated 04.07.2019. It is case of the complainant that he served legal notice dated 18.07.2019 to the accused persons at their official addressed as well as residential addresses, which were deliberately avoided and the legal notice was sent again by him vide e-mail dated 19.07.2019, to which, there was no response. Hence, the present complaint.

4. On presentation of complainant, the matter came for consideration before the Court on 29.08.2019, on which date, the following order was passed : -

" Fresh case received by way assignment. It be checked and registered.

Present: Mr. Aayush Sai Adv., for the complainant alongwith the complainant.

This is complaint filed for offence punishable under Section 138 N.I. Act. Complaint, affidavit of evidence and other annexed documents perused. The present complaint has been filed within the limitation period.

In matter of "A.C. Narayanan vs. State of Maharashtra & Anr" (2014) 11 Supreme Court Cases 790, Full Bench of Hon'ble Supreme Court of India has held as under :-

"29 From a conjoint reading of Sections 138, 142 and 145 of the NI Act as well as Section 200 of the Code, It is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complaint. Once the complainant files an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it thereafter open to the Magistrate. if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint. However, it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the NI Act. For the purpose of issuing process under Section 200 of the Code, it is open to the Magistrate to rely upon the verification in the form of affidavit

filed by the complainant in support of the complaint under Section 138 of the NI Act. It is only if and where the Magistrate, after considering the complaint under Section 138 of NI Act. documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon the complainant to remain present before the court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the NI Act."

The complaint, affidavit of evidence and documents considered in light of above cited judgment. In the opinion of this Court, there is no need to examine the complainant on oath as present complaint is duly supported by verification in the form of affidavit of the complainant. Thus, there are prima facie sufficient grounds for proceeding against accused nos. 1 to 3 and not accused no.4 for offence punishable under Section 138 N.I. Act.

Hence, issue summons against accused nos. 1 to 3 on filing of PF/RC returnable on 04.12.2019."

CHALLENGE

5. The main grievance of the petitioner / revisionist is that although he was director of the accused NO.1 Company, he had never participated in any negotiations or transaction with the complainant; AND neither he ever executed any MoU nor any document evidencing acknowledgement of his liability or that of the accused company, and therefore, he cannot be prosecuted under the Law. Heavy reliance is placed on the decision in Sandeep Jain vs. ECE Industries, 201 (2013), DLT 461 and the case of National Small Industries Corporation Ltd vs. Harmeet Singh Paintal, (2010) 3 SCC 330.

DECISION

6. I have given my thoughtful consideration to the submission made by learned counsels. I have perused the relevant record of the case.

7. At the outset I do not find any merit in the present criminal revision petition. The detailed reasons which have been assigned by this Court while disposing of the connected criminal revision petition bearing no. 96/20 titled Summy Bhasin vs. Amrit Pal Singh Bedi & criminal revision petition bearing no. 97/20 titled Summy Bhasin vs. Amrit Pal Singh Bedi arising out of Complaint Case bearing CC No. 6735/18 assailing common order dated 04.10.2019, may be read as a part and parcel of this order and same have not been repeated for the sake of brevity.

8. Suffice is to state that the complainant has prima facie averred that he was acquainted with accused nos. 2 to 4 and shared a cordial relations with them, which was the premise on the basis of which services were rendered by the complainant and the accused company acknowledged its

liability vide confirmation letter dated 19.01.2019 for a sum of RS.47,53,519/-. The allegation levelled in the complaint under Section 138 of N.I. Act read as whole coupled with the fact that huge amount was advanced to the accused company bely the plea that the accused no.3-Sumit Bhasin had no knowledge or role in the entire negotiation and / or transaction with the complainant. There is no specific denial in the reply on behalf of the accused dated 03.08.2019 that he had no role in the entire negotiation / transaction that was affected with the complainant. The defence put by the petitioner / revisionist, at this stage, cannot be considered and it is a matter of trial whether or not the entire transaction with the complainant was done without his knowledge or acceptance.

9. At the cost of repetition, reasons that have been advanced while disposing of Criminal Revision petition no. 96/20 and 97/20 may be read as part and parcel of this order and apply mutatis mutandi. Therefore, I find no illegality, infirmity or impropriety in the impugned summoning order passed by the Id Trial Court. The present criminal revision petition is accordingly dismissed. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case. A copy of this order be sent to the Ld. Trial Court for information and records. File of revision petition be consigned to Record Room.

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Date: 2020.1
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Announced in the open Court
on 16th December, 2020

(DHARMESH SHARMA)
District & Sessions Judge (West) Tis
Hazari Courts: Delhi