

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1) No(s).5409/2009

(From the judgement and order dated 19/02/2009 in CRLMC No.2/2008,
of The HIGH COURT OF DELHI AT N. DELHI)

STATE TRADING CORP.OF INDIA LTD.

Petitioner(s)

VERSUS

M/S MAHESH AGRO P.LTD.& ORS.

Respondent(s)

(With appln(s) for ex-Parte stay,exemption from filing c/c of the
impugned Judgment and office report)

(For final disposal)

WITH SLP(Cr1) NO. 5453 of 2009

(With appln(s) for stay and office report)

(For final disposal)

Date: 01/04/2014

This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s)

Mr. S.S. Jauhar,Adv.

For Respondent(s)

Mr. Ashwani Kumar,Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of signed

order.

[Neeta]

Sr. P.A.

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 722 OF 2014

(Arising out of SLP (Cr1) No(s).5409 of 2009)

WITH

CRIMINAL APPEAL NO. 723 OF 2014

(Arising out of SLP(Cr1) NO. 5453 of 2009)

[Usha Sharma]

Court Master

STATE TRADING CORP.OF INDIA LTD.

Appellant(s)

VERSUS

M/S MAHESH AGRO P.LTD.& ORS.

Respondent(s)

O R D E R

Leave granted.

These appeals have been preferred by appellant against the Judgment and order dated 19th February, 2009 passed by High Court of Delhi at New Delhi in Criminal Miscellaneous Case No. 2 of 2008 and 3940 of 2007. By the common judgment, the High Court allowed two petitions which were preferred by respondents under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as, 'Cr.P.C.' for short) and quashed Criminal Complaint No. 837 of 2006 and 838 of 2006 under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, 'the Act' for short) pending in the Court of Metropolitan Magistrate titled as "STC of India Vs. Bishanswarup Ram Krishan Agro Pvt. Ltd. & Ors.". The High Court also set aside the summoning order dated 9th June, 2006 passed by the Metropolitan Magistrate.

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Respondents made a transaction with appellant for Rs.150 crores in lieu of which they issued guarantees two cheques (without any date/post dated) on the failure of the respondents to pay the loan amount. The appellant sent both the cheques for its encashment on due date and the same were returned with note "payment stopped by drawer".

At this stage, the appellant filed petitions under Section 138 read with Section 141 of the Act which were registered as Complaint Case Nos. 837 and 838 of 2006. Summoning orders against the respondents were issued on 9th June, 2006 and the respondents challenged the same in the petition filed under Section 482 of Cr.P.C. which was allowed by the High Court by the impugned common judgment dated 19th February, 2009.

The thrust of the arguments of learned counsel for the respondents who were petitioners before the High Court was that the complaint petition was not maintainable as the cheques in question were issued for only as a security and not for any debt due.

The stand of the appellant-respondent before the High Court was that in view of Section 118 read with Section 139 of the Act - Until the contrary is proved, there is a presumption that holder/receiver of cheque received the cheque of the nature referred to in Section 138 for the discharge in whole or in part or any debt or other liability. The High Court by impugned common judgment referring to different decisions and Memorandum of Understanding dated 28th April, 2005 held that the cheques in question were not issued against any debt which was in existence at the time of issuance of the cheque.

We have heard learned counsel for the parties and perused the record. We agree with the submissions made on behalf of the appellant that presumption under the Act leads to the conclusion that the cheque was issued in discharge of the debt. It was contended by the respondent-accused that the cheques were issued as a means of security and not towards any amount due in transaction. But the question, whether the post-dated cheque can be construed as security towards any amount due to the complainant and whether the cheques in questions were subject of security are the question of fact which cannot be determined by the High Court under Section 482 Cr.P.C., till evidence are brought on record. Further the question whether the cheques in question were issued for discharge in whole or in part or any debt or other liability, is also a question of fact which cannot be determined by High Court in a petition under Section 482 Cr.P.C. In this background,

we are of the view that the High Court was not correct in interfering with the proceedings in question during the pendency of trial and in allowing the parties to raise all the questions before it.

We accordingly set aside the common judgment dated 19th February, 2009 and remit the matters to the trial court to decide the same in accordance with law.

The appeals are allowed with aforesaid observations.

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.
(DIPA K MISRA)

NEW DELHI;
APRIL 01, 2014