

CASE NO.:
Appeal (crl.) 845-846 of 2008

PETITIONER:
Southern Steel Ltd. & Others

RESPONDENT:
Jindal Vijayanagar Steel Ltd

DATE OF JUDGMENT: 08/05/2008

BENCH:
Tarun Chatterjee & Dalveer Bhandari

JUDGMENT:
JUDGMENT

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS. 845-846 OF 2008.
[Arising out of SLP (Crl.) Nos.2351-2352 of 2005]

Southern Steel Ltd. & Others .. Appellants
Versus
Jindal Vijayanagar Steel Ltd. ..Respondent

JUDGMENT

Dalveer Bhandari, J.

1. Leave granted in both these Special Leave Petitions.
2. These appeals are directed against the judgment dated 3.1.2005 of the High Court of Karnataka at Bangalore in Criminal Petition Nos. 948 and 949 of 2003.

3. The brief facts of these appeals are recapitulated as under:

On the request of the appellants (Southern Steel Ltd.), the respondent company (Jindal Vijayanagar Steel Ltd.) had supplied HR Coils to the appellants. The terms of payment under the purchase order dated 25.4.1998 granted 45 days interest free credit to the appellants for the goods sold and delivered by the 1st respondent. The appellants had issued the cheques in question in favour of the respondent company. The said cheques were dishonoured on presentation. In response to the legal notice sent by the respondent company, the appellants, through two substantially identical replies dated 6.4.2000, for the first time, contended that the appellants had been declared a sick company on 8.4.1997 under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short "SICA") and, therefore, no legal proceedings of recovery of the outstanding amount could be initiated against the appellant company.

4. It may be pertinent to mention that the purchases were made by the appellants from the respondent company after

the appellant company was declared sick under the provisions of SICA. The appellants could not dispute the fact that the purchases were made after the appellant company was declared sick under the SICA. The purchases were made holding out clear representation that the goods will be paid for. Ultimately, on non-payment of the outstanding amount, the respondent company initiated criminal proceedings against the appellant company by filing a criminal complaint under section 138 of the Negotiable Instruments Act, 1881.

5. The appellant company, aggrieved by the said proceedings, filed Criminal Petitions Nos.3225-3226 of 2000 under section 482 Cr.P.C. for quashing the proceedings under section 138 of the Negotiable Instruments Act. The High Court dismissed both these petitions holding that it was premature to analyze the entire documentary evidence as put forth by both sides to give a finding one way or the other. Thereafter, the appellants, subsequent to the directions given by the High Court, approached the trial court and produced the documents including the order passed by the Board for Industrial Financial Reconstruction (for short "BIFR") under

section 22-A of SICA. They sought discharge of the accused under section 258 of the Code of Criminal Procedure. However, the trial court dismissed those applications. Thereafter, the appellants again approached the High Court by filing two criminal petitions for quashing the criminal proceedings.

6. The appellants placed reliance on the two judgments of this court in the matter of BSI Ltd. & Another v. Gift Holdings Pvt. Ltd. & Another (2000) 2 SCC 737 and Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd. & Others (2000) 2 SCC 745. In the impugned judgment, the High Court has dealt with these two judgments along with other judgments. The High Court also accepted the legal position that the court has the power to discharge the accused or quash the proceedings at mid-stage, but having regard to the peculiar facts and circumstances of the case, according to the impugned judgment of the High Court, it would not be appropriate to interfere. Consequently, both these petitions filed by the appellants before the High Court were dismissed.

7. The appellants, aggrieved by the impugned order of the High Court, preferred these appeals and submitted that the appellants' case is squarely covered by the aforementioned cases of Kusum Ingots and BSI Ltd.

8. We have carefully analyzed the principles of law enunciated in both these cases, along with other cases, cited by Mr. M. L. Verma, learned senior Advocate appearing for the appellant company. There is no quarrel with the legal proposition which has been laid down in both the aforementioned cases, but we are in complete agreement with the view taken by the High Court in the impugned judgment that in view of the peculiar facts and circumstances of these cases, the aforesaid judgments have no application to these cases.

9. According to the High Court, admittedly the purchase orders in question were entered into and the purchases were made by the appellants with full knowledge of the proceedings that the company was declared sick under the SICA, the appellants clearly all through gave the impression to the

respondent company that the outstanding amount towards the purchase of the goods would be shortly cleared. The fact that the purchases were made with the clear promise to repay could not be disputed by the appellants. The Directors had in fact issued the cheques for discharging their liability with the full knowledge, would not only clearly show that there was an undisputed debt, but would also show that, right from the inception, the appellants in fact had no intention of paying the amount for the purchases made by them. The intention of the appellants can be gathered by their subsequent acts, conduct and behaviour of taking a shelter under the provisions of SICA. Hence, the appellants are not entitled to any indulgence of this court under its extraordinary jurisdiction under Article 136 of the Constitution. The appellants had lost their total credibility because of their conduct. When the appellant company was declared sick, then without disclosing this fact the appellants ought not to have made huge purchases from the respondent company. Ultimately, the appellant company did not pay for the purchases. This clearly indicates that the appellants had no intention of making payment of the purchases made by it.

10. The High Court, in the impugned order, has directed the trial court to dispose of the cases of the appellants as early as possible, but not later than six months from the date of its order. The appellants by approaching this Court have caused avoidable delay in disposal of these cases before the trial court.

11. In the facts and circumstances of the case, we deem it appropriate to request the trial court now to conclude the trial of these cases as expeditiously as possible and, in any event, within six months from the date of this judgment. We direct the parties to appear before the trial Court on 1st July, 2008.

12. The trial court is directed to decide these cases without being influenced by any observations passed by this court or the High Court in the impugned judgment. These appeals, being devoid of any merit, are accordingly dismissed.

.....J.
(Tarun Chatterjee)

.....J.
(Dalveer Bhandari)

New Delhi;
May 8, 2008

JUDIS