

(1997) 09 MAD CK 0073

In the Madras High Court

Case No : Criminal O.P. No. 5020 of 1997 in Criminal M.P. No. 1789 of 1997

Agritech Hatcheries and Food Ltd. and others

APPELLANT

Vs

Valuable Steels India Pvt. Ltd.

RESPONDENT

Date of Decision : 11-09-1997

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 141(1)

Citation : (1999) 96 CompCas 534 : (1997) 2 CTC 534

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : K.A. Panchapagesan, for the Appellant; Prakssh Goklaney, for the Respondent

Judgement

K. Govindarajan, J.—The respondent filed a complaint against the petitioners for the alleged offence committed u/s 138 of the Negotiable

Instruments Act, 1881. According to the respondent, in settlement of the bill of exchange for a sum of Rs. 47,57,000, dated December 18, 1995,

the second petitioner, on behalf of the first petitioner issued a cheque which was dishonoured for the reason ""account closed"". The said complaint

was taken on file by the XIVth Metropolitan Magistrate, Egmore, Madras. To quash the said proceedings, the petitioners have filed the above

O.P.

2. Learned counsel appearing for the petitioners has submitted that the complaint filed against them is barred by limitation, that there is no required

averment in the complaint against the third petitioner and that, therefore, the complaint cannot be maintained against the third petitioner for want of

allegation as required u/s 141 of the Negotiable Instruments Act.

3. Learned counsel is not in a position to substantiate his contention regarding

limitation, though the said ground has been raised in the petition.

With respect to the second submission, learned counsel took me to section 141 of the Act. According to learned counsel, nothing has been stated

in the complaint about the third petitioner. Learned counsel has relied on the decision in Senthilkumar Tea Industries v. N. Rajkumar [1994] 1 LW

(CrL.) 278, in support of his submission.

4. Learned counsel appearing for the respondents has submitted that since the third petitioner is the vice-president of the company, it cannot be

said that he has not been actively participating in the company. He further submitted that since he is the vice-president of the company, he should

be impleaded as respondent and has to face the trial. In support of his submission, he relied on the decision in Saj Flight Services (P.) Limited Vs.

P.T. Gopala Raja, .

5. In the present case, in the complaint, except stating that the third petitioner is the vice-president of the company, nothing more is stated about his

participation in the affairs of the company, at the time of commission of the offence. In the decision in Senthilkumar Tea Industries v. N. Rajkumar

[1994] 1 LW (CrL.) 278, referred to above, Pratap Singh J., relying on the decision of the apex court in Municipal Corporation of Delhi Vs. Ram

Kishan Rohtagi and Others, , has held that in the absence of any averment whatsoever to implicate the accused by invoking section 141 of the Act,

the complaint cannot be sustained against such person.

6. Learned counsel appearing for the respondent has relied on the decision in Saj Flight Services (P.) Limited Vs. P.T. Gopala Raja, , referred to

above, wherein, N. Arumugham J. has held that all the persons concerned inclusive of the other directors or the partners must be jointly and

severally liable, for which every one had to be added as party. With great respect to the learned judge, I cannot agree with the said principle set

out in the judgment. The earlier judgments of this court in Senthilkumar. Tea Industries v. N. Rajkumar [1994] 1 LW (CrL.) 278, referred to

above, and C. Balasundaram v. Prakash (CrL. M.P. No. 13898 of 1989, dated 27th November, 1990) were not brought to the notice of the

learned judge. In the judgment delivered by Pratap Singh J. in Senthilkumar Tea Industries v. N. Rajkumar [1994] 1 LW (CrL.) 278, referred to

above, the learned judge relying on the decision of the apex court in Municipal

Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, ,
referred to above, took that view.

7. To appreciate the rival submissions on both sides, we have to appreciate the scope of sections 138 and 141 of the Act, which read as follows :

138. Dishonour of cheque for insufficiency, etc., of funds in the account. - Where any cheque drawn by a person on an account maintained by him

with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or

other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour

the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank. Such person shall be

deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term

which may extend to one year, or with fine which may extent to twice the amount of the cheque, or with both :

Provided that nothing contained in this section shall apply unless -

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity,

whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by

giving a notice in writing to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of

the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due

course of the cheque, within fifteen days of the receipt of the said notice.

Explanation. - For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

141. Offences by companies. - (1) If the person committing an offence u/s 138 is a company, every person who, at the time the offence was

committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be

deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without

his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved

that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager,

secretary, or other officer of the company, such director, manager, secretary, or other officer shall also be deemed to be guilty of that offence and

shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section -

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

8. On a reading of the above provisions, it would be clear that only the person who was in charge of and was responsible to the company for the

conduct of the business of the company at the time of the commission of the offence should be deemed guilty of the offence and liable to be

proceeded against and punished for such offence. The use of the words ""such person"" in section 138 of the Act would clearly indicate that the

person who had drawn the cheque is the person to commit the offence. Section 141 of the Act is not relatable to the penal aspect, but only the

evidence aspect relating to the offence committed u/s 138 of the Act.

9. A reading of section 141(1) of the Act will clearly establish that only the, person, who, at the time of offence, was in charge of and was

responsible to the conduct of the business of the company alone can be deemed to be guilty of the offence. By introduction of section 141 of the

Act, we have to take it that the person who had not participated in the conduct of the business or was not in charge of the same, on the date of

commission of offence, cannot be prosecuted for the offence u/s 138 of the Act. In view of the specific provision, we cannot proceed on the

assumption that the third petitioner as the vice-president should have effective

participation in the business on the date of commission of offence.

Otherwise the purpose of incorporating section 141 in the Act will become futile.

10. Even appreciating the difference between the provisions adumbrated under sub-section (1) and sub-section (2) of section 141 of the Act it will

be clear that all the partners or directors need not be included in the complaint. According to sub-section (2), even the directors or partners or

other persons who are not in charge of and responsible to the company for the conduct of its business and are directly responsible for the offence,

cannot escape from the liability if it is proved that the offence was committed with the consent, connivance or was attributed to any neglect on their

part. This clearly will indicate that all the partners or directors need not be impleaded in the complaint.

11. Admittedly, in this case no such averment whatsoever is made to implicate the third, petitioner as required u/s 141 of the Act. The presumption

of his being guilty cannot at all be inferred by virtue of his position in the company. So, in view of the above, this O.P. is allowed in part. The

proceedings in so far as the third petitioner/accused in C.C. No. 7377 of 1996, on the file of the XIVth Metropolitan Magistrate, Egmore,

Chennai, are concerned are quashed and the proceedings as against the other petitioners/accused shall continue, and the learned magistrate shall

dispose of the same with respect to the other petitioners/accused, in accordance with law, consequently, no further order is necessary in CrI. M.P.

No. 1789 of 1997.