

(2001) 12 MAD CK 0028

In the Madras High Court

Case No : Criminal O.P. No's. 16531 to 16534 and Criminal M.P. No's. 8072, 8074, 8076 and 8078 of 1999

Ashok Malhotra and Another

APPELLANT

Vs

Mansi Finance (Chennai) Ltd.

RESPONDENT

Date of Decision : 03-12-2001

Acts Referred:

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

Citation : (2002) 110 CompCas 604

Hon'ble Judges : C. Nagappan, J

Bench : Single Bench

Advocate : H. Karthik Seshadri, for the Appellant; V. Govindaraj, for the Respondent

Final Decision : Allowed

Judgement

C. Nagappan, J.—The petitioner in Crl. O.Ps. 16531 and 16532 of 1999 is Ashok Malhotra and the petitioner in Crl. O.Ps. 16533 and

16534 of 1999 is S.L. Kumar, who are accused Nos. 8 and 6 in CC No. 9595 and 9596 of 1998, respectively, on the file of VII Metropolitan

Magistrate, George Town, Chennai, have filed these petitions for quashing the proceedings, insofar as they are concerned, in both the calendar cases.

2. The petitioner, Ashok Malhotra, in his petitions has stated thus : He is a business executive based in Delhi and he is 8th accused in both the

cases and no summons or copy of the complaints have been served on him. He was a non-executive and non-functional director on the Board of

the first accused company between 1992 and 1994. He had not attended the day-to-day functions of the company, since he was only a non-

executive director and he neither had knowledge, nor was he concerned with the day-to-day affairs of the company. He ceased to be a director of

the company with effect from 19.8.1994 which is evident from the letter of the company, dated 20.8.1994. He cannot be made responsible for the

affairs of the company as he was not a director at the relevant time. The inclusion of his name in the complaints is mala fide. Hence, the

proceedings in both the cases, insofar as he is concerned, are liable to be quashed.

3. The petitioner, S.L. Kumar, in his petitions, has stated as follows : He is a practising advocate in the High Court of Delhi and the Supreme Court

of India, and he is 6th accused in both the cases and no summons or copies of complaints have been served on him. He was a non-executive and

non-functional director on the Board of the first accused company between 1992 and 1994. He neither had knowledge nor was he concerned with

the day-to-day affairs of the company. He never attended the Board meetings of the company except one in 1992 and, due to this, the company

had, by its letter dated 23.11.1994, informed him that he had ceased to be the director of the company and further informed him that Form 32 had

been filed with the Registrar of Companies for the cessation of directorship. In the annual report for the year 1994-95, the fact that the petitioner

ceased to be the director from 9.11.1994 has also been mentioned. Hence, he had no connection with the company from 9.11.1994. He cannot

be made responsible, since he was not a director at the relevant time. The inclusion of his name in the complaints is mala fide. Hence, the

proceedings in both the cases, insofar as he is concerned, are liable to be quashed.

4. Heard the learned counsel for the petitioners and the respondent.

5. The respondent herein filed two private complaints, dated 15.10.1998 and 26.6.1998, against M/s Harvest Financial Limited and its directors

u/s 138 of Negotiable Instruments Act, which were taken on file in C.C. Nos. 9595 and 9596 of 1998, respectively, by the learned VII

Metropolitan Magistrate, George Town, Chennai. The complaint in C.C. No. 9595 of 1998 pertains to dishonour of three cheques, dated

1.9.1998, each for the value of Rs. 40,000 totalling to Rs. 1,20,000. The complaint of C.C. No. 9596 of 1998 pertains to dishonour of one

cheque for Rs. 40,000 dated 28.3.1998.

6. The case of the petitioner, Ashok Malhotra, is that he ceased to be the director of the first accused company with effect from 19.8.1994 as

evident from the letter of the company, dated 20.8.1994. In the typed set filed by him, he has shown copies of three letters. In the letter, dated

15.6.1994, he had written to the Board of directors of the first accused company that he was liable to company and due to his pre-occupation

with other projects, he was not in a position to devote time for the company and, therefore, he would not like to seek re-election. In the letter,

dated 12.7.1994, the managing director of the company has written to the petitioner, Ashok Malhotra, that he was liable for retirement by rotation

in the forthcoming annual general meeting to be held on 19.8.1994 and he expressed his thanks for his services. In the letter, dated 20.8.1994, the

first accused company had written that re-election of the petitioner as a director had not taken place at the annual general meeting held on

19.8.1994. In the typed set, copy of fourth annual report 1994-95 of the first accused company is also shown. In that, Chairman and Board of

directors of the first accused company are mentioned. The petitioner, Ashok Malhotra, is not shown as a director in the Board.

7. The case of the petitioner, S.L. Kumar, is that he ceased to be a director of the first accused company from 9.11.1994. In the typed set filed by

him, copy of letter, dated 23.11.1994, sent by the company to him is shown, and, in that letter, the Chairman of the company had written to him

that since S.L. Kumar has not attended Board meetings, the Board considered that his office had become vacant and, accordingly, they have filed

Form 32 for cessation of this directorship from the company. A copy of fourth annual report, 1994-95, of the first accused company is also shown

in the typed set and, in that, the Chairman and Board of directors are mentioned. Petitioner, S.L. Kumar, was shown as a director up to

9.11.1994 in the Board and, in column No. 9, it is also mentioned that S.L. Kumar ceased to be a director of the company from 9.11.1994.

8. The learned counsel for the petitioners contended that both the petitioners were directors of the first accused company between 1992-1994 and

petitioner Ashok Malhotra retired at the annual general meeting of the company on 19.8.1994 and did not seek re-election as evidenced by the

letters filed in the typed set and, hence, his name also does not find a place in the Board of directors published in the fourth annual report of the

company. The learned counsel further contended that petitioner S.L. Kumar ceased to be a director of the first accused company from 9.11.1994

as evident from the letter of the company and the fourth annual report 1994-95 of the company. In support of his above contention, he further

produced certified true copy of annual return of the first accused company made upto 30.9.1995 issued by the Registrar of Companies, Bombay.

In that certified copy, the names of Chairman and directors of the first accused company are mentioned. In it, the name of Ashok Malhotra does

not find a place as a director of the company and the date of ceasing as director is mentioned as 9.11.1994. The learned counsel for the petitioners

contended that the certified copy issued by Registrar of Companies, Bombay, is a public document and coupled with the documents filed in the

typed set, clearly shows that both the petitioners Ashok Malhotra and S.L. Kumar ceased to be the directors from 19.8.1994 and 9.11.1994,

respectively, and they did not function as directors either on the date when cheques in both the cases were issued or when the cause of action

arose for non-payment of those cheque amounts and, hence, the proceedings u/s 138 of the Negotiable Instruments Act in both the cases are not

valid in law insofar as the petitioners are concerned, and he relies on the judgment of the apex court in K.P.G. Nair v. Jindal Menthol India Ltd.

(2001) 2 Comp LJ 258 (SC). The apex court in the above decision held that a person other than the company can be proceeded against under

Sections 138 and 141 of Negotiable Instruments Act, only if that person was in-charge of and was responsible to the company for the conduct of

its business.

9. The learned counsel for the respondent contended that the complaints contained allegations that the petitioners were directors in-charge and

responsible for the conduct of the business of the first accused company, and are guilty of the offences and the question as to whether the

petitioners were directors of the company on the relevant date could only be gone into in the trial of the cases and he mainly relied on the decision

of this court in Karumuthu C. Sundaram and 5 others v. Indian Bank Merchant Banking Services Ltd. (2001) 2 CTC 209. In the facts of that

case, this court came to the conclusion that the allegations as contained in the complaint prima facie made out a case against the petitioners therein,

that they were in-charge and responsible for the affairs of the company and offences were committed with their consent and connivance, and in

those circumstances, it was held that the question whether they were actually in-charge [of] and responsible for conduct of business of the

company could be determined only after evidence was let in on that behalf by the parties. That decision will not apply to the facts of the present

cases. As already seen the respondent herein, who is the complainant in both the cases, has merely averred that the accused Nos. 1 to 12 being

the directors in-charge of and responsible for the conduct of the business of the first accused company are guilty of the offences and besides this,

nothing else is stated as to how the said directors were in-charge and responsible to the company in the conduct of its business. On the other hand,

both the petitioners have shown that they ceased to be the directors of the first accused company in the year 1994, long before the issuance of

cheques which are the subject matter of the complaints. This court in the decisions in *Ashok Muthanna v. Wipro Finance Ltd.* (2001) 2 CTC 78,

M. Chockalingam v. Sundaram Finance Service Ltd., (2000) 1 LW (Cri.) 16 and *Ashok Muthanna and Ors. v. Escorts Finance Ltd.* (2001) 2 Cri

602 have held that the persons who ceased to be the directors of the company on the relevant date cannot be proceeded against for the offence

u/s 138 of the Negotiable Instruments Act alleged against the company and quashed the proceedings of the cases.

10. Certified copy of the annual return of the first accused company issued by the Registrar of Companies is a public document, and it, coupled

with the documents filed in the typed set by the petitioners, can be taken into consideration by this court and they show that the petitioners have

ceased to be directors of the first accused company in the year 1994 itself. The cheques pertaining to the cases were drawn in the year 1998 and,

during that period, the petitioners did not function as directors of the first accused company and they were also not in-charge of the responsible for

the affairs of the company when the cause of action arose for the non-payment of the cheque amounts. Hence, the proceedings in both the cases,

as against the petitioners, are liable to be quashed. In view of the above conclusion, the other contentions raised by the learned counsel for the

petitioners need not be gone into.

11. In the result, all the petitions are allowed, and the proceedings in C.C. Nos. 9595 and 9596 of 1998 on the file of VII Metropolitan

Magistrate, George Town, Chennai, are quashed insofar as the petitioners are concerned. Connected Crl. M.P. Nos. 8072, 8074, 8076 and

8078 of 1999 are closed.