
(2003) 06 KL CK 0045

In the High Court Of Kerala

Case No : Criminal M.C. No's. 3499, 3500, 3809 and 3810 of 2003

Balakrishnan, Unity Drugs Centre and Another

APPELLANT

Vs

Jaison P.V. and Another

RESPONDENT

Date of Decision : 05-06-2003

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 141(1)
Penal Code, 1860 (IPC) — Section 420

Citation : (2004) 122 CompCas 820

Hon'ble Judges : G. Sasidharan, J

Bench : Single Bench

Advocate : T.K. Vipindas, for the Appellant; Noorji Noushad, for the State, for the Respondent

Judgement

G. Sasidharan, J.—Crl. M. C. No. 3499 of 2003 is filed by the second accused and Crl. M. C. No. 3809 of 2003 is filed by accused Nos. 7 and 8 in C. C. No. 189 of 2003 on the file of the Judicial Magistrate of the First Class I, Ernakulam. Crl. M. C. No. 3500 of 2003 is filed by the second accused and Crl. M. C. No. 3810 of 2003 is filed by accused Nos. 7 and 8 in C. C. No. 190 of 2003 on the file of the above court. These petitions are filed for quashing the proceedings in the above two cases. Since the question which arises for consideration is the same and allegations are the same, these petitions are being disposed of by this common order.

2. The petitioners were made accused in the above cases on the basis of complaint filed alleging commission of offence punishable u/s 138 of the Negotiable Instruments Act. There is also mention in the complaint that the offences punishable u/s 420 of the Indian Penal Code was also committed. On going through the complaint it is seen that the allegations are to the effect that the petitioners committed the offence u/s 138 of the Negotiable Instruments Act. In the cases, the first accused is a private limited company and the petitioners are stated to be the directors of the company. The cheques alleged to have been

issued by the company were dishonoured and alleging that even after accepting notices issued informing the dishonour of the cheques and demanding payment of the amount the accused did not care to pay the amount, complaints were filed alleging commission of offence punishable under the Negotiable Instruments Act.

3. Apart from saying that the petitioners are directors of the first accused company, there is no mention in the complaint as to how they are made liable for the offences u/s 138 of the Act. Section 141(1) of the above Act says that 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. Sub-section (2) of section 141 says that where offence under the Act has been committed by a company and 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 the offence. A reading of sub-sections (1) and (2) of section 141 of the Act shows that a director of a company can be made liable for the offence u/s 138 of the Act in two ways : (1) if he is in charge of and was responsible to the company for the conduct of the business ; and (2) if the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of the director. So it is highly necessary to say in the complaint as to how the director of a company is made liable for an offence committed by the company u/s 138 of the Act. Only if how a director is made liable for the offence committed by company is stated in the complaint, the accused will be able to know how he is being made liable and what defence he has to take in the case.

4. In *P. K. Kurien, Menon and Pai v. R. Sankara Raman* [2001] 106 Com Cas 675 : [2001] KLT 503, this court held that a person can be made liable for commission of offence u/s 138 of the Act by the company either under sub-section (1) or sub-section (2) of section 141 of the Act and hence there has to be specific averment in the complaint as to how the accused is made liable for the offence u/s 138 of the Act stated to have been committed by the company. In that case, the proceedings in the cases taken on file by the magistrate on the basis of complaint in which it was not made clear how the directors were made liable for the offence committed by the company were quashed. In the present case also, there are no sufficient averment as to how the petitioners who are stated to be directors of the company are made liable for the offence committed by the company. Hence the proceedings in the cases can be quashed as against the petitioners.

5. The proceedings in C. G No. 189 of 2003 and C. C. No. 190 of 2003 on the file of the Judicial Magistrate of the First Class I, Ernakulam, are quashed as against the petitioners.