

(2001) 10 MP CK 0056
In the Madhya Pradesh High Court
Case No : M. Cri. C. No. 5372 of 2001

Bhiwani Denim and Apparels Ltd. and others	APPELLANT
Vs	
Bhaskar Industries Ltd. and another	RESPONDENT

Date of Decision : 01-10-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239, 258, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2002) 1 MPLJ 243

Hon'ble Judges : S.S. Saraf, J

Bench : Single Bench

Advocate : Amit Verma, for the Appellant; Sharad Verma and Anurag Choudhary, for the Respondent

Judgement

S.S. Saraf, J.

This order shall also govern the disposal of Miscellaneous Criminal Cases Nos. 5369/2001, 5370/2001, 5371/2001, 5373/2001, 5374/2001, 5375/2001, 5376/2001, 5377/2001, 5378/2001, 5379/2001 and 5380/2001.

These twelve petitions have been directed u/s 482, Code of Criminal Procedure for quashing the order dated 29-8-2001 passed by the learned v. Ith Additional Sessions Judge, Bhopal affirming the order dated 15-5-2001 passed by Smt. Jyoti Vinodiya, learned Judicial Magistrate, First Class, Bhopal whereby the applications filed under Sections 239 and 258, Code of Criminal Procedure in each of the cases by the Petitioners have been dismissed.

The facts giving rise to these petitions are these:

On the basis of complaints filed by the Respondent No. 1, cases for offence u/s 138 of the Negotiable Instruments Act (for short the "Act") have been registered against the Petitioners. In each of the cases, it has been contended that the cheques issued on behalf of the Petitioner No. 1 Company and signed by the Petitioner No. 2 have been bounced. The Petitioners Nos. 3 to 13 are Directors

while the Petitioner No. 14 is Secretary and General Manager (Finance) and the Petitioner No. 15 is General Manager, Procurement and Public Relations of the Company (Petitioner No. 1). Notices were served on the Petitioners by the Respondent No. 1 as per provisions of the Act and the steps as per provisions of the Act have also been taken by the Respondent No. 1 but no payments have yet been made by the Petitioners.

The Petitioners have filed applications in each of the criminal cases pending against them under Sections 239 and 258, Criminal Procedure Code. The learned Magistrate rejected the applications. The revision petitions having been filed against the order passed by the learned Magistrate in each of the criminal cases pending against the Petitioners, have also been dismissed by the learned v. Ith Additional Sessions Judge, Bhopal by the impugned orders dated 29-8-2001. The Petitioners have, therefore, filed the present petitions invoking inherent jurisdiction of this Court. The learned Counsel for the Petitioners has contended that he does not press the petition on behalf of Petitioners Nos. 1 and 2.

Having heard the learned Counsel for both the sides and having perused the material on record, I am of the considered view that all these petitions deserve to be dismissed. Before proceeding further, it shall be useful to quote the provisions of Sections 239 and 258 of the Code of Criminal Procedure which run as under:?

239. When accused shall be discharged. ? If, upon considering the police report and the documents sent with it u/s 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

258. Power to stop proceedings in certain cases. ? In any summons case instituted otherwise than upon complaint, a Magistrate of the first class, or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal and, in any other case, release the accused, and such release shall have the effect of discharge.

A mere reading of Section 239 of Code of Criminal Procedure indicates that the provisions of this section are applicable for the trial of warrant cases by Magistrates. Undisputedly the criminal cases registered against the Petitioners are summons cases and therefore the provisions of Section 239 Code of Criminal Procedure do not attract in the present cases pending against the Petitioners. It is also clear from the perusal of Section 258, Code of Criminal Procedure that though the provisions of Section 258, Code of Criminal Procedure are applicable in summons cases but only in those summons-cases which are instituted

otherwise than upon complaints. Undoubtedly, the present criminal cases have been instituted upon complaints filed by the Respondent No. 1. It is, therefore, abundantly clear that the provisions of these two sections do not apply in the present criminal cases and therefore the learned Magistrate and the learned Additional Sessions Judge have rightly dismissed the applications filed by the Petitioners.

When the above legal position was brought to the notice of learned Counsel for the Petitioners during the arguments, he urged that this Court may consider the prayer of quashing the criminal proceedings against the Petitioners Nos. 3 to 15 independently, without quashing the orders passed by the Courts below as the Petitioners Nos. 3 to 15 were neither incharge of, nor responsible for the conduct of business of the accused company. It has, further, been contended by him that this Court in Criminal Revision No. 532/99 has opined that the Petitioners Nos. 3 to 15 are not liable to be prosecuted as they were not incharge of or responsible for the conduct of the business of the accused company. To buttress his arguments, Shri Amit Verma, learned Counsel for the Petitioners placed reliance on the following decisions of the Supreme Court:?

(i) G. Sagar Suri and Another Vs. State of U.P. and Others, (ii) K. P. G. Nair v. M/s Jindal Menthol India Ltd., 2000 Cri.L.R. (SC) 778 (iii) Kusum Ingots and Alloys Ltd., etc. Vs. Pennar Peterson Securities Ltd. and Others,

On the other hand, Shri Sharad Verma, learned Counsel for the Respondent No. 1 has contended that the Petitioners Nos. 3 to 15 are also liable to be prosecuted in view of provisions of Section 141 of the Act. He also placed reliance on the following decisions of the Supreme Court:?

(i) Anil Hada Vs. Indian Acrylic Limited, (ii) P. Rajarathinam Vs. State of Maharashtra and Others,

On the strength of the above decisions of the Supreme Court relied upon by him, Shri Amit Verma, learned Counsel for the Petitioners has contended that as per provisions of Section 141 of the Act, the Petitioners Nos. 3 to 15 were not responsible to the accused company for the conduct of the business of the company and therefore they are not liable to be prosecuted. On the contrary, Shri Sharad Verma, learned Counsel for the Respondent No. 1, on the strength of the above decisions of the Supreme Court in Anil Hada's and P. Rajarathinam's cases (supra) has urged that the Petitioners Nos. 3 to 15 being Directors, Manager and officer of the accused company are equally liable to be prosecuted.

In G. Sagar Suri's case (supra), it has been opined by the Supreme Court that merely because the accused/Petitioner filed an application for discharge before the trial Court, the High Court should not refuse to exercise jurisdiction u/s 482 Criminal Procedure Code. In K. P. G. Nair's case (supra), it has been held that since the Appellant was not person incharge and responsible to conduct of business of the company at the relevant time, he was not liable to be prosecuted. In Kusum Ingots and Alloys Ltd. 's case (supra), various provisions

of SICCA attracted as the drawer company was declared sick by BIFR.

In Anil Hada's case (supra), the Supreme Court has opined that three categories of persons can be discerned from the said provision who are brought within the purview of the penal liability through the legal fiction envisaged in the section. In this connection, the following excerpts from Anil Hada's case (supra) shall be useful:

9. it must be pointed out at the outset that the offender in Section 138 of the Act is the drawer of the cheque. He alone would have been the offender thereunder if the Act did not contain other provisions. It is because of Section 141 of the Act that penal liability u/s 138 is cast on other persons connected with the company. It is necessary to extract Section 141 of the Act which is as under:

"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.

"10. Three categories of persons can be discerned from the said provision who are brought within the purview of the penal liability through the legal fiction envisaged in the section. They are: (1) the company which committed the offence, (2) everyone who was in charge of and was responsible for the business of the company, and (3) any other person who is a director or a manager or a secretary or officer of the company, with whose connivance or due to whose neglect the company has committed the offence.

The facts in P. Rajarathinam's case (supra), are that the complaint was filed against the company and its Directors. One of the Directors approached the High Court invoking inherent jurisdiction u/s 482 Code of Criminal Procedure but remained unsuccessful. He then approached the Apex Court. It was urged before the Supreme Court that at the very outset it be identified as to who out of the arraigned person was to face the prosecution. The Supreme Court after discussing the provisions of Section 141 of the Act opined as under:

4. A bare reading of the provision mandates that some facts must come on the record in order to figure as to who should answer the charge ultimately. Necessarily, pre-charge evidence assumes importance. The complainant will have to put his side of the case as given out in the complaint and the persons summoned would have to put on the record all what is material to extricate themselves out. In any case, the crucial time would be when framing charge whereat a decision in that respect would be required to be made by the court. Presently, it appears to us premature to be resolving the conflict and the ratio deduced thereby, may turn out to be obiter. Therefore, we think that we need not resolve such conflict at present and leave it to the court concerned to pass appropriate orders at the time of framing of charge.

(emphasis supplied)

Having given a thoughtful consideration on the rival contentions raised by the learned Counsel for both the sides and keeping in view the above decisions of the Supreme Court, I am of the considered view that the contention raised by the learned Counsel for the Petitioners cannot be accepted. As discussed above, any person who is a Director or a Manager or a Secretary or an officer of the company with whose connivance or due to whose neglect the company is found to have committed the offence is also liable to be prosecuted and punished as per provisions of Section 141 of the Act. It is also clear that in *Kusum Ingots and Alloys Ltd.* 's case (supra), the Supreme Court has opined that Sub-section (2) of Section 141 of the Act makes any director/ manager/secretary or other officer of the company in connivance or any neglect on the part of whom, an offence under the Act has been committed by the Company, such director/ manager/ secretary or other officer is deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. 10. Whether the Petitioners Nos. 3 to 15 are liable to be prosecuted on the basis of the provisions of Sub-section (2) of Section 141 of the Act is the fact which is to be investigated and decided by the trial Court and therefore at this juncture it is not justified to quash the criminal proceedings initiated against them. It shall be open to the Petitioners Nos. 3 to 15 to place relevant materials in this regard before the trial Court.

It is true that this Court in Criminal Revision No. 532/99 held that the Petitioners Nos. 3 to 15 were not liable to be prosecuted as they were not incharge or responsible for the conduct of the business of the accused company. However, at that time the decisions of the Supreme Court in *Anil Hada's* and *P. Rajarathinam's* cases (supra) were not placed before this Court. Moreover, it was then not considered whether or not the accused company committed the offence with the connivance or due to neglect on the part of the Petitioners Nos. 3 to 15. Admittedly, the Petitioners Nos. 3 to 15 have not yet appeared before the trial Court. It is also clear that the charges have not yet been framed against any of the Petitioners. The Petitioners shall have opportunity to submit their points of contention before the trial Court before framing of charges. With these

observations, all these petitions stand disposed of.