(2007) 04 MAD CK 0212

In the Madras High Court

Case No : Criminal O.P. No''s. 1222 and 4098 of 2007 and Criminal M.P. No. 1 of 2007

Capt. D. Karunakar, Director, Manito Electronics Pvt. Ltd., Lt.Cl. A.C. Viswanathan, Director, Manito Electronics Pvt. Ltd., Mr. Cherian Varghese, Director, Manito Electronics Pvt. Ltd., Geojith, Securities Ltd. and Mr. Suprabhat Lala, Director, Manito Electronics Pvt. Ltd., Geojith, Securities Ltd. — APPELLANT

Vs

Tamil Nadu News Print and Papers Ltd. — RESPONDENT

Date of Decision : 12-04-2007

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 141(1)

Citation : (2008) 1 BC 117 : (2007) 138 CompCas 22 : (2007) 4 CTC 318

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

Advocate : N. Sudharshan, in Crl.O.P. 1222/07 and N.A. Kareem, in Criminal O.P. 4098/07, for the Appellant; V.M. Shivakumar, for the Respondent

Judgement

K.N. Basha, J.—In Crl.O.P. No. 1222 of 2007, the fifth accused is the petitioner and in Crl.O.P. No. 4098 of 2007, the petitioners are the fourth, sixth and seventh accused. The petitioners in both the petitions were facing trial for the alleged offence u/s 138 and 141 of the Negotiable Instruments Act (''NI Act'' in short) before the learned IX Metropolitan Magistrate, Saidapet, Chennai. The respondent filed the case for the offence u/s 138 of the NI Act implicating 10 accused in this case and the case is pending on the file of the IX Metropolitan Magistrate, Saidapet, Chennai in C.C. No. 3022 of 2000.

2. Mr. N. Sudharshan, learned Counsel appearing for the petitioner submits that the fifth accused, the petitioner in Crl.O.P. No. 1222 of 2007 has come forward with this petition seeking for the relief of quashing the proceedings initiated against the petitioner and other accused for the offence u/s 138 of the NI Act. It is submitted by the learned Counsel for the petitioner that the petitioner is the

Ship Captain employed with Eurasia Shipping and Management Company Limited, Quarry, Hongkong. It is also submitted by the learned Counsel for the petitioner that the petitioner was also conferred with the Honour of Masters(Foreign Going) by Ministry of Transport, Government of India and as a Captain of the Ship, he travels all over the world.

2 (a) The learned Counsel for the petitioner mainly contended that the petitioner has been implicated in this case by the respondent only on the ground that the petitioner is one of the Directors of the Company. It is contended by the learned Counsel for the petitioner that the petitioner has absolutely nothing to do with the conduct of the business of the Company. The learned Counsel for the petitioner further contended that the complaint does not contain any specific allegation regarding the role said to have been played by the petitioner viz., A-5 in this case, except making a vague and general allegation to the effect that A3 to A9 are involved and in charge of the conduct of the business of A1 and as such all the accused are jointly and severally liable to be prosecuted and punished under the provisions of Section 138 and 141 of the NI Act. It is contended by the learned Counsel for the petitioner that the petitioner being one of the director cannot be implicated in this case on the basis of such a vague, bald and general allegation in respect of the alleged offence u/s 138 of the NI Act. It is also pointed out by the learned Counsel for the petitioner that in the absence of any specific and definite averment in the complaint regarding the manner in which the petitioner is involved in the conduct of the business of the Company, the petitioner cannot be held liable for the offence said to have been committed by A1, the Company. It is contended by the learned Counsel for the petitioner that except such allegation made in Paragraph No. 9 of the complaint, there is absolutely not even a single averment specifying the nature of work of the petitioner herein in respect of the day to day affairs of A1, the Company. Therefore, it is contended by the learned Counsel for the petitioner that allowing the proceedings to continue in the absence of necessary allegations constituting the offence u/s 138 of the NI Act against the petitioner herein would amount to a clear case of abuse of process of law and as such the proceedings is liable to be quashed in respect of the petitioner herein.

3. In support of his contentions, the learned Counsel for the petitioner placed reliance on the following decisions:

(i) Saroj Kumar Poddar v. State (N.C.T. of Delhi) (2007 (1) TNLR 87 = 2007 (1) CTC 529(SC))

(ii) Sabita Ramamurthy v. R.B.S. Channabasavaradhya 2006(2) TNLR 551(SC)

(iii) S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another,

(iv) S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr. 2007 (2) CTC 86(SC))

4. Mr. N.A. Kareem, learned Counsel for the petitioners in Crl.O.P. No. 4098 of 2007 submits that the petitioners have been arrayed as A4, A6 and A7. It is also

contended by the learned Counsel for the petitioners that these petitioners who are the Directors of A1, the Company and has nothing to do with the conduct of the business of the company, also stand on the same footing as that of the petitioner in Crl.O.P. No. 1222 of 2007. In this matter also, the learned Counsel for the petitioners pointed out that in the complaint there is only a vague and general allegation to the effect that the accused A3 to A8 were also in charge of the conduct of the business of A1, the Company and as such they are liable for the offence committed by the first accused u/s 138 of the NI Act. Therefore, it is contended by the learned Counsel for the petitioner that by making such a bald and vague allegation without specifying the role said to have been played by the petitioners herein the petitioners cannot be held vicariously liable for the offence said to have been committed by A1, the company.

5. Per contra, the learned Counsel appearing for the respondent in both the petitions vehemently contended that there are sufficient allegations contained in the complaint against the petitioners in both the petitions viz., A4, A5, A6 and A7 to the effect that they are in charge and responsible for the conduct of the business of A1, the company and thereby they are also vicariously liable for the offence said to have been committed by the A1, the Company. The learned Counsel for the respondent relied upon the judgment of the larger Bench of the Honourable Supreme Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, wherein it was held that, "the complaint should contain the allegation to the effect that there should be a specific averment to the fact that the concerned person viz., the partner or the director should be in charge and responsible for the conduct of the company at the relevant point of time" and would state that there is a specific and definite allegation levelled against the petitioners viz., A4, A5, A6 and A7 and also A3 and A9 to the effect that they are involved and in charge of the conduct of the business of A1, the company and as such all the accused are liable to be prosecuted for the offence u/s 138 of the NI Act. The learned Counsel for the respondent would further contend that the complaint filed by the respondent fulfils the requirements and conditions as pointed out by the Honourable Supreme Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, and the petitioners have absolutely no ground warranting interference of this Court to quash the proceedings initiated against them. The learned Counsel for the respondent pointed out to the judgment in Saroj Kumar Poddar v. State (N.C.T. of Delhi) reported in 2007 (1) TNLR 87 (SC) (cited supra) relied upon by the learned Counsel for the petitioners and would submit that the decision was clarified subsequently by the Apex Court by its judgment in S.M.S. Pharmaceutical Ltd. v. Neeta Bhalla and Anr. reported in 2007 (2) Supreme 459, as follows:

A plain reading of the said judgment would show that no such general law was laid down therein. The observations were made in the context of the said case as it was dealing with a contention that although no direct averment was made as against the appellant of the said case ....

and would further submit that the petitioner cannot argue on the basis of the decision rendered by the Honourable Supreme Court in Saroj Kumar Poddar v. State (N.C.T. of Delhi) reported in 2007 (1) TNLR 87 (cited supra) to the effect that the complaint should contain averments to the effect as to how and in what manner the accused was responsible for the conduct of the business of the Company.

6. I have carefully considered the rival contentions putforth on either side and also perused the impugned complaint. At the outset it is relevant to incorporate the exact allegations contained in the complaint in Paragraph No. 9 of the complaint in respect of the petitioners in both the petitions which reads as follows:

9. The complainant states that the second accused, representing the first accused has signed the said Cheque. To the knowledge of the complainant, the third to nineth accused and accused are involved and in charge of the day-to-day business of the first accused and as such all the accused are jointly and severally liable to be prosecuted and punished as envisaged under the provisions of Sections 138 & 141(1) of the Negotiable Instruments Act, 1881.

7. A perusal of the complaint reveals that the respondent-complainant implicated as many as 10 number of accused. A1 is the company; A2 is the Managing Director; A3 is the Executive Director; A4 to A9 are the Directors of A1 Company. As far as the petitioners in both the petitions are concerned they have been arrayed as A5, A4, A6 and A7 and all of them have been described in the cause title of the complaint as Directors. It is pertinent to note that in the complaint at Paragraph No. 9 as incorporated above, there is an allegation to the effect that A3 to A9 are involved and in charge of the day to day business of A1, the Company and as such they are also liable to be prosecuted for the offence u/s 138 of the NI Act. As already pointed out only in that paragraph the petitioners have been implicated along with the other accused and the complainant has not whispered a word about the position held by the petitioners herein and there is not even a single statement to the effect that the petitioners are Directors and as such they are in charge of the day to day business of A1, the Company. It is merely stated that A3 to A9 are involved and in charge of the business of A1, the Company. It is also relevant to note that there is absolutely not a whisper in the complaint that the petitioners are having knowledge about the offence or the offence has been committed with the consent and connivance of the petitioners herein, the ingredients contemplated u/s 141 of Negotiable Instruments Act to implicate the Directors or partners of a company or a firm for vicariously to be held liable for the offence said to have been committed by a company or firm. One more important aspect to be borne in mind is that there is a specific averment in respect of the impugned complaint that there is a liability only on the part of A1, the Company and A2, the Managing Director of the Company said to have been signed and issued the disputed cheques involved in this case. Therefore, there is no difficulty in coming to the conclusion that A2 is the person

who is mainly responsible and in charge of A1, as he has signed and issued the cheques. It is the settled position of law that a person cannot be held vicariously liable for the offence said to have been committed by a Company in the absence of specific and definite allegations against such person. As relied on by both the learned Counsel the Honourable Supreme Court held in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, as follows:

There is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability u/s 141 of the NI Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable.

Under Section 141 what is required is that the persons who are sought to be made criminally liable should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. The liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a company.

It was further held that,

Therefore, in order to bring a case within Section 141 of the Act the complaint must disclose the necessary facts which make a person liable. ...

A Director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business.

8. In yet another decision in Saroj Kumar Poddar Vs. State (NCT of Delhi) and Another, , the Apex Court has held that,

13. The purported averments which have been made in the Complaint Petitions so as to make the appellant vicariously liable for the offence committed by the Company read as under:

That the accused No. 1 is a public limited company incorporated and registered under the Companies Act, 1956, and the accused 2 to 8 are/were its Directors at the relevant time and the said company is managed by the Board of Directors and they are responsible for the in charge of the conduct and business of the company-Accused No. 1. However, cheques referred to in the complaint have been signed by the Accused No. 3 & 8 i.e. Shri K.K. Pilania and Shri.N.K. Munjal for and on behalf of the Accused Company No. 1.

... there is no averment in the Complaint Petitions as to how and in what manner the appellant was responsible for the conduct of the business of the Company or otherwise responsible to it in regard to its functioning. He had not issued any cheque. How he is responsible for dishonour of the cheque has not been stated. The allegations made in paragraph 3, thus, in our opinion do not satisfy the requirements of Section 141 of the Act.

9. The Honourable Supreme Court also considered the principles laid down by the larger Bench in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, and ultimately held that,

With a view to make a Director of a Company vicariously liable for the acts of the Company, it was obligatory on the part of the complainant to make specific allegations as are required in law.

Therefore, it is clear that a mere general allegation to the effect that the accused who are the Directors at the relevant point of time are responsible and in charge of the conduct of the business of the Company is not sufficient to hold a Director to be vicariously liable for the offence said to have been committed by a Company.

10. The contentions of the learned Counsel for the respondent to the effect that the Honourable Supreme Court has clarified its position in respect of the decision rendered in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, is unacceptable as the same is not applicable to the facts of the instant case. The Apex Court has only pointed out that the decision is only made on the basis of the context of the said case. I have already pointed out the specific allegations contained in respect of certain Directors in the said case. It is also pertinent to note the specific allegations contained in respect of the Directors in S.M.S. Pharmaceutical Ltd., v. Neeta Bhalla and Anr. reported in 2007 (2) Supreme 459 (cited supra):

3. In the complaint petition the allegations made inter alia are as under:

The Accused No. 1 is a duly incorporated Company, having its registered office at the address mentioned above, represented by the Director, Accused No. 2. The accused No. 3 and 4 are also the Directors of the Accused No. 1 company and the accused 2 to 4 are actively involved in the management of the affairs of the Accused No. 1 Company.

The Hon''ble Apex Court held that the above said allegation is not sufficient to fasten one of the Directors with vicarious liability for the offence said to have been committed by a Company and ultimately, confirmed the quashing order passed by the High Court and it is extracted as follows:

If the complaint petition is read in its entirety, the same would show that the only person who was actively associated in the matter of obtaining loan, signing cheques and other affairs of the company which would lead to commission of the alleged offence was the accused No. 2.

... 23. On a plain reading of the averments made in the complaint petition, we are satisfied that the statutory requirements as contemplated u/s 141 of the Act were not satisfied.

11. The Hon''ble Supreme Court in N.K. Wahi v. Shekhar Singh and Ors. reported in 2007 (2) Supreme 811 taken a similar view. In that case, the Hon''ble Apex Court has held as follows:

To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to who the Directors are incharge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the Court can always come to a conclusion in facts of each case. But still in the absence of any averment or specific evidence the net result would be that complaint would not be entertainable.

12. The Hon''ble Supreme Court further incorporated the allegation contained in that case as follows:

The accused Nos. 2 to 12 are the Directors/persons responsible for carrying out the business of the company and the liability of the accused persons in the present complaint is joint and several.

The Hon''ble Apex Court, ultimately held that the above said allegations are not sufficient to fasten the accused to be held vicariously liable for the offence committed by the company.

13. Therefore, in view of the above well settled principle of law laid down by a catena of decisions of the Honourable Supreme Court in order to implicate a particular accused who was holding a position as Director, a mere vague and general allegation to the effect that the said Directors are also responsible and in charge of the business of the Company itself is not sufficient to make them vicariously liable for the offence said to have been committed by a Company and on the other hand, there should be a specific averment and allegation in the complaint to that effect, which should be clear and unambiguous in respect of the specific role played by such Director indicating as to how and in what manner such Director was responsible for the conduct of the business of the company or otherwise responsible with regard to its functioning.

14. In the instant case also, as already pointed out, there is absolutely no specific, clear and unambiguous allegations as to how and in what manner the petitioners were responsible for the conduct of the business and there is absolutely no specific role assigned to the petitioners in respect of the conduct of the business of the first accused company.

15. Mr. N. Sudharshan, learned Counsel also placed reliance on a decision of this Court in V. Kathikeyan and Anr. v. The Registrar of Companies, etc. reported in

2001 2 L.W. (Cri) 656 to the effect that benefit should be extended to the similarly placed other accused though they have not preferred any petitions for quashing. This Court in that decision after allowing the quashing petition held as follows:

31. Under the circumstances, the entire proceedings in pursuance of the wrong cognizance taken in E.O.C.C. No. 177 of 1998 on the file of the Additional Chief Metropolitan Magistrate, E.O.I, Egmore, are liable to be quashed not only as against the petitioners but also as against all the other accused though they are not the petitioners herein.

In this case also, apart from the petitioners herein, the other accused, viz., A-3, A-9 and A-10 also stand on a similar footing like the petitioners herein and therefore, the proceedings initiated against them is also liable to be quashed.

16. For the aforesaid reasons, this Court is left with no other alternative except to quash the proceedings in C.C. No. 3022 of 2000 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai, in respect of the petitioners herein and other Directors, viz., A3, A9 and A10, though they have not filed any separate quash petitions, with a view to expedite the trial in respect of the remaining accused. Accordingly, the same is quashed. The Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

17. This Court is also constrained to direct the learned IX Metropolitan Magistrate, Saidapet to expedite the trial in C.C. No. 3022 of 2000 as the case itself relates to the year 2000 and more particularly, within a period of five months from the date of receipt of a copy of this order.