
(2015) 02 SC CK 0147

In the Supreme Court Of India

Case No : Criminal Appeal No. 402 of 2015 (Arising out of SLP (Criminal) No. 1001 of 2013)

Charanjit Pal Jindal

APPELLANT

Vs

L.N. Metalics

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Essential Commodities Act, 1955 — Section 10, 3
Limitation Act, 1963 — Section 14
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2015) ALLMR(Cri) 4072 : (2015) 3 CCR 232 : (2015) 2 JCC 137 :
(2015) 3 RCR(Civil) 621 : (2015) 3 RCR(Criminal) 526 : (2015) 5 SCALE 16

Hon'ble Judges : S.J. Mukhopadhyaya, J;N.V. Ramana, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted. This appeal has been preferred by the accused-Appellant against the judgment and order dated 9th November, 2012 passed by the High Court of Orissa, Cuttack in CrI. Revision No. 467 of 2011. By the impugned judgment and order the said Criminal Revision has been dismissed by the High Court affirming the concurrent finding of conviction arrived at by the Trial Court and the Appellate Court.

2. The facts leading to the present appeal is as follows:

The Respondent-company filed a complaint case stating therein that it dealt with production, manufacturing, marketing and selling of sponge iron and other allied iron ore products. The Appellant who was one of its customers, placed orders through its agent M/s. Jayani Ispat, Raipur during 21.06.2007 and 24.12.2007 under different invoices and challans. Accordingly, various materials were supplied to the Appellant by the Respondent-Company. The Appellant also made payment in intervals. However, by 24.12.2007 an amount of Rs. 72,22,037/- remained outstanding on the Appellant. As such, a request was made to clear the

outstanding amount. On such request, in the month of December, 2007, a sum of Rs. 2,50,000/- was paid. On 27.02.2008, a written request was sent by the Respondent-company for clearing the outstanding dues and submitting "C Form as required by the Sales Tax Department. The Appellant in first week of March, 2008, handed over cheques on different dates in total amounting to Rs. 5,00,000/- and promised that the entire outstanding dues will be cleared up before 20.4.2008. Seven cheques bearing numbers 678339 dated 21.3.2008, 678340 dated 24.3.2008, 678341 dated 26.3.2008, 678342 dated 29.3.2008, 678343 dated 3.4.2008, 678344 dated 8.4.2008 and 678345 dated 14.04.2008 drawn on Nariman Point Branch of Central Bank of India, Mumbai amounting to Rs. 35,00,000/- which had been issued by the Appellant in favour of the opposite party were presented before its banker Andhra Bank, Sambalpur on 18.4.2008 for encashment. The bank informed that the cheques could not be honoured due to stop payment on the account as per the instruction of the drawer.

3. As a consequence of the said dishonor of the cheques, the Respondent issued notice Under Section 138 of the Negotiable Instrument Act (hereinafter referred to as "Act") through one of its Directors asking to make payment within 15 days of the notice. On non-payment of the said amount, a complaint was filed by the Respondent-company before the Trial Court, which after hearing the parties and on appreciation of evidence convicted the accused-Appellant for the offence Under Section 138 of the Act.

4. Aggrieved by the judgment dated 17.04.2010 passed by the sub-Division Judicial Magistrate, Sambalpur in I.C.C. No. 259/2008, the Appellant preferred Criminal Appeal No. 26/2010 before the District and Sessions Judge, Sambalpur which was dismissed on 27.05.2011. Against the same, Criminal Revision was preferred before the High Court which was rejected by the impugned judgment.

5. The learned Counsel for the Appellant contended that the Appellant was the Director of M/s. Naina Devi Steel Castings Pvt. Ltd. The cheque was issued on behalf of the said Company. Though the complainant/Respondent arraigned the Appellant-Director as an accused, the Company, namely M/s. Naina Devi Steel Castings Pvt. Ltd. was not arraigned as accused. It is contended that in absence of impleadment of the Company as per Section 141 of the Act, the punishment Under Section 138 on the Director cannot be sustained.

6. The learned senior counsel appearing on behalf of complainant/Respondent requested to refer the matter to a larger Bench. According to him the three Judges' Bench in the case of Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd., AIR 2012 SC 2795 : (2012) 2 BC 638 : (2012) 108 CLA 480 : (2012) 172 CompCas 76 : (2012) 2 CompLJ 433 : (2012) CriLJ 2525 : (2012) 5 CTC 101 : (2012) 2 JCC 113 : (2012) 2 RCR(Criminal) 854 : (2012) 4 SCALE 644 : (2012) 5 SCC 661 : (2012) 113 SCL 564 : (2012) AIRSCW 2693 : (2012) 3 Supreme 416 followed the decision of this Court in case of State of Madras Vs. C.V. Parekh and Another, AIR 1971 SC 447 : (1971) CriLJ 418 : (1970) 3 SCC 491 : (1971) SCC(Cri) 97 and suggested that in Sheoratan Agarwal and Another Vs. State of

Madhya Pradesh, AIR 1984 SC 1824 : (1984) 3 CompLJ 245 : (1984) 2 Crimes 566 : (1984) 2 SCALE 362 : (1984) 4 SCC 352 : (1985) 1 SCR 719 the Court failed to appositely appreciate the decision in C.V. Parekh's case and incorrectly distinguished the same. In C.V. Parekh's case, the Court was dealing with an order of acquittal passed in a case Under Section 10 of the Essential Commodities Act. In the said case though the representative of the Company was made an accused, the Company itself was not charge sheeted. On the acquittal of the accused by the High Court the State raised a contention before this Court that the accused Respondent therein could be convicted on the basis of Section 10 of the Essential Commodities Act under which if the person contravening an order made Under Section 3 is a company, every person, who, at the time when contravention was committed, was in charge of, and responsible to the company for the conduct of the business of the Company shall be deemed to be guilty of the contravention and shall be liable to be proceeded.

7. Having noticed the aforesaid submission, this Court observed as follows:

"Learned counsel for the Appellant, however, sought conviction of the two Respondents on the basis of Section 10 of the Essential Commodities Act under which, if the person contravening an order made Under Section 3 (which covers an order under the Iron and Steel Control Order, 1956), is a company, every person who, at the time the contravention 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 contravention and shall be liable to be proceeded against and punished accordingly. It was urged that the two Respondents were in charge of, and were responsible to, the company for the conduct of the business of the Company and, consequently, they must be held responsible for the sale and for thus contravening the provisions of Clause 5 of the Iron and Steel (Control) order. This argument cannot be accepted, because it ignores the first condition for the applicability of Section 10 to the effect that the person contravening the order must be a company itself. In the present case, there is no finding either by the Magistrate or by the High Court that the sale in convention of Clause (5) of the Iron and Steel (Control) order was made by the Company. In fact, the Company was not charged with the offence at all. The liability of the persons in charge of the Company only arises when the contravention is by the Company itself. Since, in this case, there is no evidence and no finding that the Company contravened Clause (5) of the Iron and Steel (Control), order the two Respondents could not be held responsible. The actual contravention was by Kamdar and Villabhadas Thacker and any contravention by them would not fasten responsibility on the Respondents. The acquittal of the Respondents is, therefore, fully justified."

8. In Sheoratan Agarwal's case while dealing with Section 10 of the Essential Commodities Act, two Judges' Bench observed as follows:

"Section 10 of the Essential Commodities Act is as follows:

"(1) If the person contravening an order made Under Section 3 is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this Sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in Sub-section (1), where an 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 purpose 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."

The Section appears to our mind to be plain enough. If the contravention of the order made Under Section 3 is by a Company, the persons who may be held guilty and punished are (1) the Company itself (2) every person who, at the time the contravention was committed, was in charge of, and was responsible to, the Company for the conduct of the business of the Company whom for short we shall describe as the person-in-charge of the Company, and (3) any director, manager, secretary or other officer of the Company with whose consent or connivance or because of neglect attributable to whom the offence has been committed, whom for short we shall describe as an officer of the Company. Any one or more or all of them may be prosecuted and punished. The Company alone may be prosecuted. The person-in-charge only may be prosecuted. The conniving officer may individually be prosecuted. One, some or all may be prosecuted. There is no statutory compulsion that the person-in-charge or an officer of the Company may not be prosecuted unless he be ranged alongside the Company itself. Section 10 indicates the persons who may be prosecuted where the contravention is made by the Company. It does not lay down any condition that the person-in-charge or an officer of the Company may not be separately prosecuted if the Company itself is not prosecuted. Each or any of them may be separately prosecuted or alongwith the Company. Section 10 lists the person who may be held guilty and punished when it is a Company that contravenes an order made Under Section 3 of the Essential Commodities Act. Naturally, before the person in-charge or an officer of the Company is held guilty in that capacity it

must be established that there has been a contravention of the order by the Company. That should be axiomatic and that is all that the Court laid down in *State of Madras v. C.V. Parekh* (supra) as a careful reading of that case will show and not that the person-in-charge or an officer of the Company must be arraigned simultaneously along with the Company if he is to be found guilty and punished. The following observations made by the Court clearly bring out the view of the Court.

"It was urged that the two Respondents were in charge of, and were responsible to, the company for the conduct of the business of the Company and, consequently, they must be held responsible for the sale and for thus contravening the provisions of Clause 5 of the Iron and Steel (Control) order. This argument cannot be accepted, because it ignores the first condition for the applicability of Section 10 to the effect that the person contravening the order must be a company itself. In the present case, there is no finding either by the Magistrate OR by the High Court that the sale in contravention of Clause 5 of the Iron and Steel (Control) order was made by the Company. In fact, the Company was not charged with the offence at all. The liability of the persons in charge of the Company only arises when the contravention is by the Company itself. Since, in this case, there is no evidence and no finding that the Company contravened Clause 5 of the Iron and Steel (Control), order the two Respondents could not be held responsible. The actual contravention was by Kamdar and Villabhadras Thacker and any contravention by them would not fasten responsibility on the Respondents.

The sentences underscored by us clearly show that what sought to be emphasised was that there should be a finding that the contravention was by the Company before the accused could be convicted and not that the Company itself should have been prosecuted along with the accused. We are therefore clearly of the view that the prosecutions are maintainable and that there is nothing in Section 10 of the Essential Commodities Act which bars such prosecutions."

9. In *Aneeta Hada's* case (supra) the question that arose for determination by this Court was whether an authorized signatory of a company would be liable for prosecution Under Section 138 of the Act without the company being arraigned as an accused. As there was a difference of opinion between the two learned Judges regarding the interpretation of Sections 138 and 141 of the Act reference was made to the larger Bench of three Judges. In the said case, this Court noticed the ratio laid down in *C.V. Parekh's* case and the view expressed in *Sheoratan Agarwal's* case while interpreting Section 138 and 141 of the Act, this Court observed as follows:

"53. It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as

the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant. 58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution Under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh (supra) which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove."

10. From the aforesaid finding, we find that after analyzing all the provisions and having noticed the different decisions rendered by this Court, the three Judges' Bench arrived at the irresistible conclusion that for maintaining the prosecution Under Section 141 of the Act, arraigning a company as an accused is imperative. Hence in this case, we find no reason to refer the matter to the larger Bench.

11. In the present case, only the Appellant was impleaded as an accused. In that view of the matter, we are of the view that complaint with respect to the offence Under Section 138 read with 141 of the Act was not maintainable following the decision in Aneeta Hada (supra). We set aside the judgment dated 17.4.2010 passed by the Trial Court, order dated 27.5.2011 passed by the Appellate Court and the impugned judgment dated 09.11.2012 passed by the High Court of Orissa, Cuttack in Criminal Revision No. 467 of 2011. The Appellant stands acquitted.

12. However, it will be open for the complainant to move before the Court of Competent Jurisdiction for appropriate relief and may file a petition Under Section 14 of Limitation Act seeking exclusion of the period on the ground that the Respondent was seeking remedy before the other forum. The appeal is allowed with aforesaid observations.