
(2014) 06 AP CK 0120

In the Andhra Pradesh High Court

Case No : Crl. P. Nos. 10179 and 10180 of 2013

Deccan Chronicle Holdings Ltd.

APPELLANT

Vs

T. Venkatram Reddy

RESPONDENT

Date of Decision : 03-06-2014

Acts Referred:

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

Citation : (2014) 2 ALT(Cri) 251

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : A. Chandrasekhar, Advocate for the Appellant; Ravi Kiran Chitta, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—Crl. P. No. 10179 of 2013 is filed by A-1 and A-2 and Crl. P. No. 10180 of 2013 is filed by A-3 and A-4 u/s 482 Cr.P.C. to quash the entire proceedings in C.C. Nos. 500 of 2013 on the file of the XI Special Magistrate, Erramanzil, Hyderabad. The brief averments in the complaint filed by the second respondent-Axis Bank Ltd., Ahmedabad, Gujarat State u/s 138 read with 141 of the Negotiable Instruments Act (for short "the Act") may be stated as follows:

2. The second respondent is the banking company incorporated under the Companies Act, 1956 having its registered office at Ahmedabad, Gujarat State and branches at various places including the present Corporate Branch at Begumpet, Hyderabad. A-1 is the private limited Company, A-2 is the Director and authorized signatory, A-3 and A-4 are the directors of A-1 company who are actively involved in the day-to-day activities of the Company in its functions and as such are responsible for the acts of the company. At the request of A-1 company from time to time, the complainant bank sanctioned certain additional loan facilities amounting to Rs. 100 Crores for the purpose of meeting various requirements of the company (cash credit) against the primary security of

hypothecation of stock and current assets of the company and collateral security of immovable properties of the company held under equitable mortgage and also against personal guarantee of the guarantors i.e. A-3 and A-4. Subsequently, in discharge of the said amount, the accused issued five account payee cheques for discharge of amount of Rs. 83,33,00,000/- in favour of the Axis Bank Limited towards part payment of the loan account maintained with Axis Bank. The cheques were sent to the service branch of the complainant bank, Hyderabad on 05.11.2012 for realization and crediting the same to the above said loan account of A-1. But, the said five cheques were returned by the bank of the accused i.e. ICICI bank Ltd. On 06.11.2012 adducing the reason for return as "account blocked situation covered in 2125" vide five cheque return memos dated 06.11.2012 individually. Thereafter, the complainant bank issued notices to the accused and filed a complaint against them. The cognizance of the offence u/s 138 read with 141 of the Act was taken by the learned Magistrate and now it is pending trial on the file of the XI Special Magistrate, Erramanzil, Hyderabad which is sought to be quashed.

3. According to the complainant, all the accused knowing fully well that all the five cheques would be dishonoured due to account blocked situation" in their account issued them to the complainant bank and as such the accused are liable to be prosecuted u/s 138 read with 141 of the Act. It is averred in para 6 of the complaint specifically that A-2 to A-4 were involved and responsible for day-to-day affairs of the accused No. 1 and therefore they are also liable to be prosecuted u/s 138 read with 141 of the Act. It is further averred specifically in para 9 of the complaint that the accused issued the aforesaid cheques in favour of the complainant bank knowing fully well that the said cheques would be dishonored upon presentation and that the intention of the accused in issuing the aforesaid five cheques without making arrangements to honour them shows the intention of the accused to deceive the complainant bank deliberately and that the accused had no intention to pay the said amount.

4. It is contended by the accused that the complaint against the accused is not maintainable in view of the law laid down by the Supreme Court and various High Courts regarding the dishonour of the cheques as the cheques were not issued towards clearance of any legally enforceable debt but towards security without date mentioned in the cheque. It is further contended that to fasten liability against the accused for the offence under Sec. 138 of the Act, a specific role has to be attributed to the accused in the complaint showing as to how and in what manner the managing director or directors were responsible for the conduct of the business of the company. In the instant case, according to the accused only it is generally mentioned that the accused are actively involved in day-to-day activities of the company and its function and therefore they are not responsible for the acts of the company. Such a vague and general allegation according to accused is not sufficient to prosecute them for the offence u/s 138 read with 141 of the Act.

5. As to the first contention that the cheques were not issued towards discharge of any legally enforceable debt or liability, but were only issued as security for the loan obtained, it is a pure question of fact which can be decided by the trial Court after going through the evidence let in by the parties but this Court is not supposed to record a finding basing on the respective contentions in exercise of powers u/s 482 Cr.P.C.

6. Insofar as the other contention is concerned, in the first place Section 141 of the N.I. Act has to be perused. The provision reads as under:

(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:22 [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(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. Explanation.--For the purposes 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.]"

7. The aforesaid provision creates vicarious liability against the persons who at the time the offence was committed were in charge of and were responsible to the company and for the conduct of the business of the company. In *K.K. Ahuja Vs. V.K. Vora and Another*, , the Supreme Court took the view that the complaint against the persons/officers who were either responsible for the conduct of the business of the company or were in charge of the company should be specific as to their position, duties and the role in the issue of dishonoured cheque disclosing consent, connivance or negligence. Complaint against any and every person of the company without there being a specific allegation is not maintainable. According to the Supreme Court, the legislative intention is not to implead all and sundry as accused if requirements of Section 138 and 141 of the

Act are not serious than the ultimate punishment.

8. The Supreme Court explained the position as under:

If a mere reproduction of the wording of Section 141(1) in the complaint is sufficient to make a person liable to face prosecution, virtually every officer/employee of a company without exception could be impleaded as accused by merely making an averment that at the time when the offence was committed they were in charge of and were responsible to the company for the conduct of business of the company. That would be absurd and not intended under the Act. As the trauma, harassment and hardship of criminal proceedings in such cases, may be more serious than the ultimate punishment, it is not proper to subject all and sundry to be impleaded as accused in a complaint against a company, even when the requirements of Section 138 read With Section 141 of the Act are not fulfilled.

9. Thus, from the view taken by the Supreme Court, a general allegation to the effect that the accused was in charge and was responsible for the affairs and conduct of the business of the company at the relevant time is not sufficient and the allegation should be specific and a person cannot be prosecuted if the requirements of Section 138 read with Section 141 of the Act are not satisfied.

10. In National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and Another, the Hon"ble Supreme Court held as under:

Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the director. But, the complaint should spell out as to how and in what manner respondent was in charge of or was responsible to the accused company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

11. A Company may have a number of directors and to make any or all the directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfillment of the requirements u/s 141."

12. In A.K. Singhania Vs. Gujarat State Fertilizer Company Ltd. and Another, the Supreme Court reiterated the same principles laid down in the above referred judgments.

13. The facts of the present case have to be examined in the light of the principles laid down by the Apex Court. The contention of the petitioners-accused is that there is no specific allegation in the complaint as to how and in what manner the accused were in charge of, and were responsible for the business of

the company. On the contrary, the argument put forth on behalf of the second respondent complainant is that there are sufficient averments made in the complaint showing that the accused are in charge of and were responsible for the business of the company and therefore, they cannot avoid prosecution u/s 138 read with 141 of the Act.

14. Section 141 of the Act ignores the directors or other office bearers of the company from being vicariously liable only if they are not in charge of and responsible for the conduct of the business of the company at relevant time when the offence was committed. It is true that for fastening criminal liability, there would not be any presumption that every director is aware of the transactions which take place in the regular course of business of the company. But, when there is an averment that they are aware and they are in charge of the affairs of the company at relevant time, and if there is some material showing their knowledge or involvement in the transaction in question, then it is for the accused to establish that they are in fact not in charge of or not responsible for the affairs of the company at relevant time. In such an event, it would be in the course of the trial by adducing the relevant material, but while exercising jurisdiction u/s 482 Cr.P.C. this Court has to examine as to whether the accused were unnecessarily subjected to criminal prosecution by making a vague and false assertion saying that they are in charge of the business of the company at relevant time and that they know about the transaction,

15. In the present case, it is clearly mentioned in the complaint that A-2 is the managing director of the company and he represents the company. Therefore, it cannot be said that he is no way connected with the affairs of the company or that he does not know about the transaction relating to borrowing of the amount and subsequent issuance of the cheques in discharge of the debt. Moreover, he is the signatory of all the five impugned cheques. It is specifically mentioned that A-2 to A-4 are actively involved in day-to-day activities of the company in its function and as such they are responsible for the acts of the company. Added to this, admittedly, A-3 and A-4 acted as guarantors of the loan transaction and they furnished the personal guarantee apart from other securities furnished to the bank at the time of borrowing the loan amount. Subsequent to the grant of loan, the complainant bank addressed a letter of sanction of cash credit of Rs. 100 Crores to A-1 company by marking copies to A-3 and A-4 viz. T. Venkatram Reddy and P.K. Iyer respectively for information in their capacity as guarantors to the facility with a request to return the duplicate copy with endorsement in token of acceptance of terms and conditions as enumerated in the letter. The said letter was acknowledged by A-3 and A-4.

16. In view of the aforesaid facts, it is no longer permissible for any of the accused to plead that they are not aware of the impugned transaction as the managing director as well as the directors and therefore, as rightly pleaded in the complaint petition, they are in charge of and responsible for the business of the company at the time when the impugned cheques were issued. Basing on the

above referred judgments of the Hon"ble Supreme Court, the petitioners cannot in my view escape prosecution u/s 138 read with Section 141 of the Act. All the accused are personally involved in the transaction and this is not a case wherein cognizance of the offence u/s 138 read with Section 141 of the Act was taken against them basing on a bald or vague statement made in the complaint. For the foregoing reasons, there are no valid grounds to quash the proceedings initiated against the petitioners. Hence, both the criminal petitions are dismissed. Miscellaneous petitions, if any, filed in these criminal petitions, shall stand closed.