(2013) 02 AHC CK 0100

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 6362 of 2013

D.K. Rustagi APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 118(1), 138, 139, 140, 141

Citation : (2013) 4 ADJ 478 : (2014) ALLMR(Cri) 119 : (2013) 3 BC 329 : (2014) 2 RCR(Criminal) 266

Hon'ble Judges : Ramesh Sinha, J

Bench : Single Bench

Advocate : Anurag Khanna, for the Appellant; Manish Tiwari and Ashwani Kumar Awasthi, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Sinha, J.—Sri Manish Tiwary, Advocate, has filed his power on behalf of opposite party No. 2 today, which is taken on record.

Heard Sri Anurag Khanna, learned counsel for the applicant and Sri Manish Tiwary, learned counsel for opposite party No. 2 and learned AGA for the State.

By means of this application filed u/s 482 Cr.P.C., the applicant has prayed for quashing the impugned order dated 11.12.2012 and the entire proceedings of complaint case No. 837 of 2012 (M/s. Rohit Electronics v. D.K. Rustagi), u/s 138 of Negotiable Instrument Act, Police Station Cantt., District Varanasi pending in the Court of IXth, A.C.J.M., Varanasi.

The short point argued by the learned counsel for the applicant is that in the present complaint the Company M/s. Aargee Contracts Pvt. Ltd. of which the applicant is the Managing Director has not been made an accused for the offence in question which is said to have been committed by the Company. In this regard, learned counsel for the applicant has referred to Section 141 of N.I. Act which deals with offences by the Companies Act. In support of his contention, he has placed reliance on the judgment of the Apex Court in the case of Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd., and has drawn the attention of this Court towards paragraph Nos. 21 to 24, hence the present complaint is liable to be quashed. Paragraph Nos. 21 to 24 are reproduced here-in-below:

21. At this juncture, we may refer to Section 141 which deals with offences by companies. As the spine of the controversy rests on the said provision, it is reproduced below:

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:

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.

22. On a reading of the said provision, it is plain as day that if a person who commits the offence u/s 138 of the Act is a company, the company as well as every person in charge of and responsible to the company for the conduct of business of the company at the time of commission of offence is deemed to be guilty of the offence. The first proviso carves out under what circumstances the criminal liability would not be fastened. Subsection (2) enlarges the criminal liability by incorporating the concepts of connivance, negligence and consent that engulfs many categories of officers. It is worth nothing that in both the provisions, there is a "deemed" concept of criminal liability.

23. Section 139 of the Act creates a presumption in favour of the holder. The provision has to be read in conjunction with Section 118(1) which occurs in Chapter XIII of the Act that deals with special rules of evidence. Section 140

stipulates the defence which may not be allowed in a prosecution u/s 138 of the Act. Thus, there is a deemed fiction in relation to criminal liability, presumption in favour of the holder, and denial of a defence in respect of certain aspects.

24. Section 141 uses the term "person" and refers it to a company. There is no trace of doubt that the company is a juristic person. The concept of corporate criminal liability is attracted to a corporation and company and it is so luminescent from the language employed u/s 141 of the Act. It is apposite to note that the present enactment is one where the company itself and certain categories of officers in certain circumstances are deemed to be guilty of the offence

2. Sri Manish Tiwary, learned counsel for opposite party No. 2 could not refute the argument of learned counsel for the applicant and the proposition of law, as has been held by the Apex Court in the case of Aneeta Hada (supra) Considered the submissions advanced by the learned counsel for the parties. I have perused the impugned complaint filed by opposite party No. 2 and from the perusal of which I find that the argument advanced by the learned counsel for the applicant has force as the Company M/s. Aargee Contracts Pvt. Ltd. has not been made an accused in view of Section 141 of the N.I. Act for the offence u/s 138 of the N.I. Act as the Company is juristic person and the Company as well as every person in charge are responsible to the Company for the conduct of business of the Company at the time of commission of offence, is deemed to be guilty of the offence. The law laid down by the Apex Court in the case of Aneeta Hada (supra) is squarely covers in the instant case. Hence, the prosecution of the applicant for the offence in question stands vitiated and the impugned order passed on 11.12.2012 against the applicant as well as proceedings of the aforesaid case are hereby quashed.

Accordingly, the present 482 Cr.P.C. application stands allowed.