(1999) 11 DEL CK 0097

In the Delhi High Court

Case No : Criminal M. (M.) No. 1983/99 and Criminal M. No. 6226/99

Gyan Chand Kotia APPELLANT

Vs

Indian Renewable Energy Development Agency Ltd. (Ireda) RESPONDENT

Date of Decision : 22-11-1999

Acts Referred:

Citation : (2000) 2 AD 415 : (2000) 99 CompCas 517 : (2000) 83 DLT 447

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Ashish Aggarwal, for the Appellant; Ravi Data, for the Respondent

Judgement

M.S.A. Siddiqui, J.—By the petition u/s 482 Cr.P.C., the petitioner seeks quashing of the order dated 4.1.1999 passed by the Metropolitan Magistrate, New Delhi directing issue of process against him.

2. The cheque No. 371664 dated 31.3.1998 for Rs. 4.46 lacs was issued by M/s. Marson''s Finance Ltd. in favor of the respondent company. When the cheque presented for encashment, it was dishonoured on the ground that sufficient funds were not available. A notice was served on M/s. Marson''s Finance Ltd. but despite its service, the respondent company did not make payment. This was followed by the complaint in the Court of the Metropolitan Magistrate, New Delhi. On the complaint being filed, process was also issued against the petitioner. Aggrieved thereby, the petitioner has come up before this Court u/s 482 Cr.P.C.

3. Referring to Section 141 of the Negotiable Instruments Act (for short the Act), learned counsel for the petitioner contended that the complaint against the petitioner is not maintainable as at the relevant time he was not in charge of and was responsible to M/s. Marson''s Finance Ltd. for the conduct of its business. Learned counsel has invited my attention to the averments made in para Nos. 2 and 6 of the complaint which are as under :

"2. That the Accused No. 1, namely, M/s. Marson''s Finance Ltd., is a Public Limited Company, registered under the Companies Act, 1956 having its

Registered Office at 4, Chandni Chowk Street, Calcutta - 700072; the Accused No. 2, Shri Akhilesh Kotia and the Accused No. 3 Shri Gyan Chand Kotia are the Directors of Accused No. 1 and as such responsible for taking all decisions for and on behalf of the Accused No. 1; and the Accused No. 4 Shri Gaurav Jain is the Manager of the Accused No. 4 and as such responsible for all the acts of Accused No. 1.

6. That as submitted hereinabove, the Accused Nos. 2 and 3 are the Directors and Accused No. 4 is the Manager of the Accused No. 1 i.e. M/s. Marson''s Finance Limited having its Regd. Office at 4, Chandni Chowk Street, Calcutta - 700072. The cheque No. 371664 was duly issued by and on behalf of the Accused No. 1, as per the decision and instructions of the Accused Nos. 2 and 3, and Accused No. 4 being the Manager is responsible for the conduct of business of Accused No. 1, and hence the accused Nos. 2 to 4 are jointly and severally liable for the acts of the Accused No. 1 in terms of the provisions contained u/s 141 of the Negotiable Instruments Act."

4. A bare reading of the aforesaid paragraphs of the complaint would show that there is specific allegation in the complaint that the petitioner was also responsible for taking all the decisions on behalf of the offending company, namely, M/s. Marson''s Finance Ltd. and further the cheque in question was issued on behalf of the said company under the instructions of the petitioner. From these averments, a reasonable inference can be drawn that the petitioner could also be vicariously liable for the offence u/s 138 of the Act alleged to have been committed by the offending company. In my opinion, the ratio decidendi of the decision of the Supreme Court in State of Haryana Vs. Brijlal Mittal (1988) 2 Com LJ1 (SC) does not govern a case like in hand. In that case it was found that except a bald statement in the complaint that the respondents were directors of the manufacturers, there was no other allegation to indicate, even prima facie, that they were in charge of the company and also responsible to the company for the conduct of its business. On these facts, it was held that simply because a person is director of the company it does not necessarily mean that he would be vicariously liable for the offence committed by the company. In the instant case, as noticed earlier, there is specific allegation against the petitioner that the cheque in question was issued by the offending company under his instructions. In this view of the matter, the learned Magistrate has not committed any illegality in taking cognizance of the offence under Sections 138/141 of the Act against the petitioner.

For the foregoing reasons, the petition is dismissed.

