

(2009) 07 MAD CK 0047

In the Madras High Court

Case No : Criminal O.P. No. 10973 of 2009

J. Dhanalakshmi

APPELLANT

Vs

The South Indian Bank Limited

RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2011) 7 RCR(Criminal) 1167

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : S.N. Amarnath, for the Appellant;

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—The submissions made by Mr. S.N. Amarnath, learned Counsel for the petitioner were heard. The petition and the papers produced along with the petition in the form of typed set of papers were also perused.

2. The petitioner, as correspondent of Sri Jayendra Saraswathy Vidhyalaya Matriculation Higher Secondary School, Coimbatore, Aerodrome

Road, Siganallur, Coimbatore - 641 005, had issued two cheques in favour of the respondent herein in discharge of a debt/liability. The said

cheques, when presented for payment, were dishonoured for insufficiency of funds and there was also no arrangement made between the drawer

of the cheque and the banker for payment of the amount covered by the cheques.

3. According to the complainant, the petitioner is liable only as a Guarantor as it was agreed to deduct the installments for the personal loans given

to the staff of the said institution. In fact after the institution of a previous case

in CC No. 143/2004 against the petitioner based on another dishonoured cheque, the petitioner effected a settlement with the petitioner and issued two cheques for a total amount of Rs. 39,00,000/- (Rs. 20,00,000 + Rs. 19,00,000) towards the full and final settlement of the amount due on account of loans sanctioned to the staff members of the above said institution. Both cheques, when presented, were returned unpaid for want of funds in the account on which the cheques were drawn.

4. Following the procedure prescribed in Section 138 of the Negotiable Instruments Act the respondent issued issuing a statutory notice within the time stipulated therein. But the drawer of the cheques failed to comply with the demand made in the statutory notice within the time allowed by the statute after the receipt of such notice. Therefore the respondent has preferred the complaint u/s 200 Cr.PC for the offence u/s 138 of the Negotiable Instruments Act, 1881 against the petitioner herein.

5. The petitioner has come forward with the present petition u/s 482 Cr.PC seeking an order quashing the said crime number initiated on private complaint on two grounds. They are:

i) The person who preferred the complaint on behalf of the respondent has not been properly authorised by the respondent.

ii) The petitioner being a correspondent of the institution, who signed the cheque on behalf of the institution, cannot be prosecuted without prosecuting the institution along with the petitioner.

6. Both the grounds are untenable and unsustainable. The position has been made clear in several judgements, which this Court feels unnecessary

to cite. An artificial person conferred juristic personality cannot act itself and it should have a natural person (human being) to represent it and to

sign the documents on its behalf. As such the officers of such juristic persons can prefer the complaint on behalf of such juristic person. If at all

there is any defect at the institution of the criminal proceedings, the same shall be only an irregularity which shall not go to the root of the case and

such irregularity can be rectified subsequently. Even a complaint preferred on behalf of a juristic person (the company) by a person who has not

been duly authorised, or in case authorisation having some defects, the same can be ratified and rectified subsequently by such company.

Therefore, for such defects which do not go to the root of the problem, the

complaint cannot be quashed at the inception itself. Hence, this Court comes to the conclusion that the first contention raised by the petitioner deserves to be rejected as untenable.

7. The second contention is also untenable. Section 141 of the negotiable Instruments Act simply says who are all deemed to be the persons

committing the offence u/s 138 in case the offence u/s 138 of the Negotiable Instruments Act, 1881 is committed by the Company, the section

says 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. What the legislature wanted to mean is that the company and every

person-in-charge and was responsible for the conduct of the business of the company are deemed to be co-offenders. It does not deal with the

question as to whether a person in-charge of and responsible to the company for the conduct of its business can be or cannot be prosecuted for

the said offence without prosecuting the company itself. It is trite law that in a criminal prosecution for an offence, it is not necessary to prosecute

the co-offenders in one and the same trial. An offender who has committed an offence cannot contend that he could not be prosecuted without

arraying the co-offenders as co-accused in the case in which he is being prosecuted. If the same principle is applied to the facts of the case on

hand, it shall be clear that there is no substance in the second contention raised by the learned Counsel for the petitioner.

8. Furthermore, in a number of cases, the highest court in the country has held that a director/partner of a company/firm, when prosecuted for an

offence u/s 138 Negotiable Instruments Act for the dishonour of a cheque issued on behalf of the company/firm, cannot challenge the prosecution

on the ground that the company/firm has not been arrayed as accused along with him. This position was elaborately discussed and held so in Anil

Hada Vs. Indian Acrylic Limited, . In Para 13 of the judgment cited supra, it has been made crystal clear by the following observations:-

If the offence was committed by a company it can be punished only if the company is prosecuted. But instead of prosecuting the company, if a

payee opts to prosecute only the persons falling within the second or third category the payee can succeed in the case only if he succeeds in

showing that the offence was actually committed by the company. In such a prosecution the accused can show that the company has not

committed the offence, though such company is not made accused, and hence the prosecuted accused is not liable to be punished. The provisions

do not contain a condition that prosecution of the company is sine qua non for prosecution of the other persons who fall within the second and the

third categories mentioned above. No doubt a finding that the offence was committed by the company is sine qua non for convicting those other

persons. But if a company is not prosecuted due to any legal snag or otherwise, the other prosecuted persons cannot, on that score alone, escape

from the penal liability created through the legal fiction envisaged in Section 141 of the Act.

9. The said view expressed by the Hon''ble Supreme Court in *Anil Hada v. Indian Acrylic Limited* was followed by another bench of the Hon''ble

Supreme Court in *R. Rajagopal v. S.S. Venkat* reported in (2001) 10 SCC 91. In the said case when a partner of a partnership firm was sought

to be prosecuted for an offence punishable u/s 138 of the Negotiable Instruments Act, 1881 without prosecuting the partnership firm on whose

behalf the cheque in question had been issued, the High Court quashed the complaint. When the said order of the High Court was challenged

before the Hon''ble Supreme Court, setting aside the order of the High Court, the Hon''ble Supreme Court observed that the stand of the said High

Court that a director/partner cannot be prosecuted without prosecuting the company/firm on whose behalf the cheque was issued as a co-accused

could not be sustained in view of the pronouncement of law in *Anil Hada v. Indian Acrylic Limited* cited supra.

10. As the ground on which the complaint against the petitioner is sought to be quashed in the case on hand has been covered by the above said

judgments of the Hon''ble Supreme Court, the relief sought for in this petition has got to be rejected. The contention raised by the learned Counsel

for the petitioner that the prosecution of the correspondent of the school, when the cheque in question had been issued on behalf of the school,

without prosecuting the school is not maintainable, cannot be sustained in view of the emphatic pronouncement of law in this regard by the Hon''ble

Supreme Court in the judgments cited supra. Despite the fact that the attention of the learned Counsel for the petitioner was drawn to the above

said authoritative pronouncements of the Hon''ble Supreme Court laying down the law in this regard, the learned Counsel for the petitioner went to

the extent of stating that those judgments need not be relied on as the language employed by the legislature in coining the provision would,

according to him, indicate that the partner/director could not be prosecuted without prosecuting the firm/company on whose behalf the cheque in

question was issued. The learned Counsel pointed out the language used in the section, which reads as follows:

(1) If the person committing an offence u/s 138 is a company, every person who, at the time the offence was committed, was incharge 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:

11. Pointing out that as per the said provision, the person responsible for the conduct of the business of the company as well as the company, shall

be deemed to be guilty of the offence, the learned Counsel for the petitioner submitted that the term "as well as" would indicate the conjunction

and"" and hence the prosecution of the director/partner without prosecuting the company/firm would not be maintainable. The language used

therein will indicate that the company as well as the person responsible for the conduct of its business are made joint offenders. But that doesn't

mean that some of the offenders alone cannot be prosecuted without prosecuting the other joint offenders. The very same language used in the

provision was considered and interpreted as indicated supra by the Hon''ble Supreme Court. In view of the law laid down by the Hon''ble

Supreme Court in Anil Hada v. Indian Acrylic Limited's case which was followed in R. Rajagopal v. S.S. Venkat's case and subsequent cases,

the contention raised by the learned Counsel for the petitioner is liable to be rejected as untenable and accordingly the same is rejected.

12. For all the reasons stated above, this petition is dismissed.