courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 20/09/2026

(2017) 07 GUJ CK 0157

In the Gujarat High Court

Case No : 6902 of 2011

JAI KARSANBHAI UKANI	APPELLANT
Vs	
STATE OF GUJARAT & Anr.	RESPONDENT

Date of Decision : 07-07-2017

Acts Referred:

Citation : (2017) 07 GUJ CK 0157

Hon'ble Judges : A.Y. Kogje

Bench : Single Bench

Advocate : MR AR GUPTA, MR HK PATEL

Final Decision : Allowed

Judgement

1. Rule. Learned APP waives service of rule on behalf of the respondent-State.

2. The two applications are filed for quashing of two respective Criminal cases filed by respondent No.2 pending in the Court of 2nd Additional Senior Civil Judge and Additional Chief Judicial Magistrate, Gandhidham.

3. Both these applications are between the same parties and hence, with the consent of the parties, the applications are taken up for joint hearing and disposal.

4. The Criminal Cases and its details are as under :- CR.MA No. Criminal Case No. Bank Name & Cheque No. Date Check amount 6902/2011 622/2010 Union Bank of India & 7.12.2009 31,73,000/- 51009405 6903/2011 623/2010 Union Bank of India & 9.12.2009 52,15,500/- 51009406

5. The facts of the case are as under :- The respondent No.2(complainant) had delivered goods ordered by the applicant towards which the applicant issued cheques with aforementioned details. The cheques came to be deposited with the bank of the complainant, which was returned with an endorsement of fund insufficient. The statutory demand notice came to be issued and despite expiry of the statutory period, the applicant had failed to make the payment as per the

statutory notice, thereby, giving cause of action to the complainant to file a complaint under the provisions of the Negotiable Instruments Act, claiming that the complainant had illegally enforceable debt, for which, the cheques in question were issued, but when the same were tendered with the bank, the same were bounced with an endorsement of, "funds were insufficient." The failure to make the payment, despite the statutory demand notice, led to filing of the respective Criminal cases against the applicant herein. These petitions are filed for quashing of the criminal case on various grounds both technical and on merits.

6. Learned advocate for the applicant submits that filing of the criminal case is in-violation of the provisions of the Negotiable Instruments Act. The requirement for filing such complaint before taking cognizance were not fulfilled. The complaint is not filed by a person, who is authorised, or in whose favour, the cheques were issued. The issuance and delivery of the statutory notice does not confirm with the requirement of the statute. The main thrust of argument on behalf of the applicant is that the complainant has not instituted proceedings under the Negotiable Instruments Act against the Company, which has issued the cheque to the complainant. The statutory notice issued and the accused arraigned in the complaint is an individual in the capacity of the Director, without there being any statutory notice or arraigning of the Company as an accused. He drew attention of this Court the copy of the complaint filed before the Magistrate Court at Gandhidham (Annexure-A), the statutory notice issued by the complainant only to the Director at Page-39 and submits that the record clearly indicates that no proceedings are instituted against the company, which is the drawer of the cheque. In absence of the Company, as an accused, the complaint against any individual in the capacity of Director, cannot be maintained. He relies upon the judgment of the Apex Court reported in (2012) 5 SCC page 661 Aneeta Hada vs. Godfather Travels & Tours (P)Ltd.

7. As against this, learned advocate for the respondent No.2 (Original complainant)submits that the applicant is the signatory of the cheque and therefore, the complaint against the signatory of the cheque can be maintained. He submits that the proceedings under the Negotiable Instruments Act are in compliance with the requirement of the statute. He submits that the applicant, in his capacity of the Director was responsible for the day-to-day business of the company and complainant side was directly dealing with the applicant. Insofar as the business is concerned and the goods which was delivered were not to the applicant and hence, there existed legally enforceable debt, for which the complaint is maintainable.

8. Learned APP submits that the nature of offence being under the Negotiable Instruments Act, an appropriate order be passed on the basis of the law enforced.

9. Heard learned advocates for the rival parties and considered the case papers filed in support of the complaint at Annexure-A. The cause title indicates that the accused person is an individual in the capacity of the Director. The allegations

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/jai-karsanbhai-ukani-appellant-hash…

made are against the individual in his capacity as a director, the transaction also is alleged to have been made with an individual. However, the cheques in question are from the account of the company and signed by the Director of the Company. As there is no dispute that the cheques in question are from the account of the Company and that the goods supplied is also to the company, as the invoice issued is also in the name of the company, thereby indicating that the transaction by the complainant is with the Company. The issuance of statutory notice is also in the name of the Director and not the company. The proof of service of such statutory notice indicates the notice having been served to the individual in the capacity of the Director and not to the company. Therefore, the facts of this case are clearly covered by the judgment of Aneeta Hada (Supra.), where the Apex Court has held as under :- "56. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights to persons, whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term "as well as" in the section is of immense significance and, in its tentacle, it brings in the company as well as the Director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the Directors or other officers is tenable even if the company is not arraigned as an accused. The words "as well as" have to be understood in the context. 57. In RBI v. Peerless General Finance and Investment Co.Ltd. it has been laid down that the entire statute must be first read as a whole, then section by section, clause by clause, phrase by phrase and word by word. The same principal has been reiterated in Deewan Singh v. Rajendra Pd.Ardevi and Sarabjit Rick Singh v. Union of India.

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 indicated.

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 drag-net 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

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/jai-karsanbhai-ukani-appellant-hash…

down in C.V. Parekh which is a threejudge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada is overruled with the qualifier as stated in para 51. The decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us hereinabove."

10. In view of the aforesaid ratio of the Apex Court the contentions raised by the complainant would not save the prosecution which is directed against the individual, while not proceeding against the company with whom the transaction appears to have taken place and hence, the applications deserves to be allowed. The Criminal Case Nos. 622/2010 and 623/2010 pending before the Court of 2nd Additional Senior Civil Judge and Additional Chief Judicial Magistrate, Gandhidham are ordered to be quashed. Rule is made absolute. No order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/jai-karsanbhai-ukani-appellant-hash…