(2000) 12 MAD CK 0066

In the Madras High Court

Case No : Criminal O.P. Nos.9298 and 9304 of 1998 and Criminal M.P.Nos.3747 to 3749, 3751 and 3752 of 1998

Karumuthu C. Sundaram and 5 others APPELLANT

Vs

Ind Bank Merchant Banking Services Ltd. and another RESPONDENT

Date of Decision : 18-12-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142

Citation : (2002) 110 CompCas 598 : (2001) 1 LW(Cri) 326

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : Mr. K. Ashokan, for the Appellant; Mr. V. Ramakrishnan, for the Respondent

Judgement

1. Both these applications i.e. Crl.O.P.Nos.9298 and 9304 of 1998 are being disposed of in this common order as the issues in both these

petitions are same.

2. The petitioners are accused in a private complaint filed by the respondent for the offences under Sections 138 and 142 of the Negotiable

Instruments Act. These proceedings are sought to be quashed in these petitions filled by the petitioners on the ground that the petitioners are

merely Directors of the company on whose behalf the cheque in question was issued and they do not take part in the running of the company and

as such, they are not in-charge and responsible for the conduct of the business of the company and the mere mentioning that the petitioners were

in-charge and responsible for the conduct of the business of the company would not be sufficient to make them liable for the offences alleged, in the absence of anything more set out to substantiate the same.

3. Mr. K. Ashokan, the learned senior counsel appearing for the petitioners, would cite several authorities to show that there must be some

particulars in the complaint to show that the petitioners are in-charge and responsible for the affairs of the company and in the absence of any

material for the same the proceedings are liable to be quashed. The authorities are as follows:

(1) M/s. Saifee Golden Jubilee Rolling Mills v. State By Inspector of Police, 1989 L.W. 227: (2) P. Jeyanthi v. State rep. by Sub-Inspector of

Police 1990 L.W. (Cri.) 398; (3) Alfred Borg Co., India (P) Ltd. v. Antox India (P) Ltd. 1992 CL.W. 120; (4) Mr.Col.R.S.Agarwal v. M/s.

Ashok Leyland Ltd. 1998 (1) L.W. (Cri.) 24; (5) M/s. Pepsi Foods Ltd. v. Spl. Judl. Magistrate and others, 1998 (1) L.W.72.

4. Mr. V. Ramakrishnan, the learned counsel for the respondent, would also cite some authorities to show that the averments that the

petitioners/accused are in-charge of the affairs of the company are sufficient for the Magistrate to take cognizance and only during the course of

trial, the complainant will be able to establish the truth of the said averments mentioned in the complaint and as such, the proceedings in these

complaints are not liable to be quashed. The authorities are these:-

(1) Municipal Corporation of Delhi Vs. Purshotam Dass Jhunjunwala and Others, ; (2) Natesha Singh and others v. M/s. Klen and Marshalls

Manufacturers and Exporters Pvt. Ltd. 2000 (1) MWN 15 Mad.; (3) M/s. Shanthi Vihar Hotels Ltd. v. P.F. Inspector, Madras, 1991(2) MWN

247; (4) Mrs. Manju Podar v. Ashwani Kumar, 86 Com. Cases 631 P & H; (5) Bharat Kumar Modi and Others Vs. Pennar Paterson Securities

Ltd. and Others, .; (6) M/s. Talavadi Rock and Minerals Products Ltd. rep. by its M.D. G.S.Srikantan, Chennai-18 v. M/s. Alwarpet Finance and

Funds Ltd. rep. by A.Naray- anan 1999 (2) MWN 120 Mad. (7) N. Doraisamy v. Archana Enterprises, 97 Comp. Cas 129 Mad.; (8)

Habibunnisa Akthar v. S And S Industries, 83 Comp. Cas 593 Mad.; (9) Krishna Murarj. Poddar and another v. State of Maharashtra and

another, 2000 (1) MWN 85 Bom; (10) K.P.G. Nair v. Jindal Menthol India Ltd. 99 Comp. Cas 519.

5. Before dealing with this question, let us now refer to the allegations

mentioned in the complaints filed against the petitioners.

6. In the complaint in C.C. No.2611 of 1998 in para 14, the relevant allegations against the petitioners are given as follows:-

The second to eighth accused were at the time of the offence was committed and still are in-charge and responsible to the first accused for the

conduct for the business of the first accused company. The offence was also committed with the consent and connivance of the second to eighth

accused. All the accused have therefore committed the offence and are liable to be punished.

7. The relevant averments made against the petitioners in para 15 of the complaint in C.C. No.2612 of 1998 are given as follows:-

The second to the tenth accused were are the time of the offence was committed and still are in charge and responsible to the first accused for the

conduct for the business of the first accused company. The offence was also committed with the consent and connivance of the second to tenth

accused. All the accused have therefore committed the offence and are liable to be punished.

8. It is settled law that there must be averments in the complaint making accusation constituting the alleged offence to enable the Magistrate to take

cognizance of such offence and to issue process to such of the persons against whom the allegations have been made in the complaint.

9. In this context, it would be appropriate to quote the provision u/s 141(1) of the Act.

141. Offences by companies: (1) If the person committing an offence u/s 138 is a company, every person who, at the time of 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.

10. The reading of Section 141(1) of the Act would make it clear that the company as well as the persons in- charge and responsible for the

conduct of the business of the company at the time of the commission of offence can be proceeded with, as they shall be deemed to be guilty of the

offence. Therefore, the complainant has to necessarily allege in the complaint that the persons who are the accused in the complaint were in-charge

of and responsible for the conduct of the business of the company.

11. Section 141(2) of the Negotiable Instruments Act would provide thus:-

(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.

12. As laid down by this Court as well as the Apex Court, mere issuance of cheque and the dishonour would not create cause of action warranting

the prosecution. The non-payment of the cheque amount despite the receipt of statutory notice alone would give rise to the cause of the action,

which would be the subject matter of the prosecution. Therefore, when it is alleged, in the complaint that they are responsible for the failure to

make payment of the same despite the service of notice, those allegations would certainly cover Section 141(2).

13. Section 141(2) starts with the non obstante clause. Under sub-section (1), the persons in-charge of and responsible to the company shall be

deemed to be guilty of the offence. But, under sub-section (2), even the persons who are not stated to be in-charge of and responsible to the

company can be prosecuted, if it is alleged and proved that the offence has been committed with the consent or connivance of, or is attributable to,

any neglect on the part of any of those persons prosecuted.

14. On going through the Sections and the relevant accusations in the complaint, it is clear that the complainant mentioned, in the complaint that the

petitioners were not only in-charge of and responsible for the affairs of the company, but also the offences were committed with the consent and

connivance of the petitioners/accused and therefore, all the accused are liable to be punished for the offences under Sections 138 and 142 of the

Negotiable Instruments Act,

15. When the allegations as contained in the complaint prima facie make out a case against the petitioners that they are in-charge and responsible

for the affairs of the company and the offence was committed with the consent and connivance, they were rightly summoned by the trial Court to

face the trial. The question whether they were actually in-charge and responsible for the conduct of the business of the company, would be

determined only after evidence was let in in that behalf by the parties.

16. As laid down by the Apex Court, the proceedings against the accused in the initial stage can be quashed only if on the face of the complaint or

the documents accompanying the same, no offence is made out. In other words, the test is that taking the allegations and the complaint as they are

without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its

power u/s 482 of the present Code.

17. But, in this case, the said requirement has not been satisfied inasmuch as there are allegations in the complaints against the petitioners covering

both Sections 141(1) and 141(2) of the Negotiable Instruments Act.

18. In this context, it would be worthwhile to refer the definition of the word ''complaint''. Section 2(d) of the Cr.P.C. would define the word

''complaint'' as follows:-

complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person,

whether known or unknown, has committed an offence, but does not include a police report.

19. Thus, according to Section 2(d), Cr.P.C. there must be some allegations either oral or in writing with respect to the persons mentioned therein

to come to a prima fade conclusion that the said individual has committed the offence. Though no form is prescribed in which the complaint must

be given, there must be an allegation which prima facie discloses the commission of an offence with respect to the persons shown as accused,

which is necessary fact for the learned Magistrate to take further action.

20. Section 141 of the Negotiable Instruments Act is a deeming provision to bring the Directors or partners within the purview of Section 138, if

they are in-charge of and responsible to the company for the affairs of the company at the time when the offence was committed. It does not make all the directors or partners liable for offence, whether they do business or not. But for the said provision, only the company or the firm or

association of individuals alone is liable for the offence u/s 138 of the Act.

21. So, to bring the persons within the purview of Section 138 of the Act, there must be some specific averment against- those persons so as to

attract Section 141 of the Act to take cognizance of the offence u/s 138 of the Act by the learned Magistrate as against those persons. In the

complaints in the instant case, there are averments constituting the offences u/s 138 and 142 of the Act.

22. In the light of those specific averments mentioned in the complaints attracting the offences alleged, the contention of the learned senior counsel

that the mere mentioning that the petitioners were in-charge and responsible for the conduct of the business of the company in the complaint is not

sufficient cannot be accepted.

23. This well settled law has been laid down by the Supreme Court in Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, and

Municipal Corporation of Delhi Vs. Purshotam Dass Jhunjunwala and Others, . The rulings contrary to the above principles by various High

Courts are not good law in view of the Apex Court''s judgments. Moreover, the various judgments of Supreme Court cited by the counsel for the

petitioner would deal with the cases where it was held that there was no material produced before the Court during the course of trial to establish

the allegation made in the complaint. Therefore, those decisions would not be applicable to this case, as we are dealing with only the quashing

application and not about the sufficiency or insufficiency of the materials produced before the trial Court for considering the conviction or acquittal.

24. In view of the above decisions, I do not find any merit in these petitions and accordingly, the same are dismissed. Consequently, the connected

Crl.M.Ps. are closed. The trial Court is directed to go on with the trial and dispose of the matters as expeditiously as possible.