
(2019) 04 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 252 Of 2018, 01 Of 2018

Krishna Pallis Pvt. Ltd. And Ors

APPELLANT

Vs

Haldia Petrochemicals Ltd

RESPONDENT

Date of Decision : 22-04-2019

Acts Referred:

Companies Act, 1956 — Section 255, 256, 257, 258, 264(2), 266 (1)(a), 266(1)(b) (III), 303(2)

Negotiable Instruments Act, 1881 — Section 138, 141

Citation : (2019) 04 J&K CK 0024

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : R. P. Sharma

Final Decision : Dismissed

Judgement

1. Petitioners have filed the present petition for quashing the proceedings of the complaint under Section 138 of Negotiable Instruments Act, pending before the learned court of Special Railway Magistrate, Jammu and also order dated 26.03.2018, passed by learned Additional Sessions Judge, Jammu in File No. 44/ Rev.

2. In this petition, it is stated that petitioner No. 2 was not a Director of the Company/Firm at the time of issuance of cheque in question, so process issued against her is illegal. It is stated that Form 32, issued in pursuant to Sections 303(2), 264(2), or 266 (1) (a) and 266 (1) (b) (III) of the Companies Act, 1956 clearly reveals that petitioner No. 2 has ceased to be director of the Company w.e.f. 22.01.2010, whereas the cheque in question was issued thereafter on 12.04.2010, so cognizance taken against petitioner No. 2 is illegal and against the settled principle of law.

3. I have considered the record of the court below.

4. From the perusal of record of court below, it reveals that respondent company

filed a complaint under Section 138 of the Negotiable Instrument Act, before the learned Chief Metropolitan/Metropolitan Magistrate, at Calcutta wherefrom process against the petitioners herein was issued. During the pendency of petition before that court, the matter was taken to Hon'ble High Court of Calcutta wherein complainant was allowed to withdraw the complaint with liberty to proceed against the petitioners to any other court of competent jurisdiction at Jammu. Accordingly, a complaint was filed before the court of learned Special Railway Magistrate (Sub-Judge), Jammu. During the pendency of this petition, petitioners herein filed Criminal Misc. Petition before the learned Special Railway Magistrate,(Sub-Judge) Jammu seeking dismissal of the complaint.

5. Objections were invited, accordingly, and court below after hearing learned counsel for the parties dismissed the said miscellaneous application vide order dated 04.05.2017. Against the said order dated 04.05.2017, a criminal revision petition was filed before the learned Additional District Judge, Jammu by the petitioners herein which also came to be dismissed vide order dated 26.03.2018.

6. I have heard learned counsel for the petitioners and gone through the material on record.

7. In the present petition, petitioners have raised disputed questions of fact as well as law. However, the argument advanced on behalf of the petitioner No. 2, that she had already ceased to be a Director of the Company/Firm before issuance of cheque in question, so process issued against her is legally unsustainable, has force under law.

Section 141 of Act read as under:-

Offences by companies. -

(1) If the person committing an offence under section 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. Explanation.- For the purposes of this section,-

(a) "company" means anybody corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

8. From bare perusal of this section, it is evident that when accused is company, then 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 according ; in terms of sub section 2 of this section 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.

9. So foremost consideration for arraying a Director as accused is that, he/she should be director when the cheque was issued or cause of action accrues to complainant to file complaint.

10. In the present case cheque has been issued on 12.4.2010; but from perusal of Form 32 (pursuant to Sections 303(2), 264(2), or 266 (1) (a) and 266 (1) (b) (III) of the Companies Act, 1956), it is evident that petitioner No. 2 was not the Director of the Company at the time of issuance of cheque in question i.e., on 12.04.2010 as she had already been ceased to be a Director of the Company/ Firm w.e.f. 22.01.2010.

11. In the case of DCM Financial Services Ltd. vs. J.N. Sareen & anr.,(2008) 8 SCC the Supreme Court has considered the effect of resignation of a Director in proceedings under Section 138 of the Act. In that case, the Director had already resigned prior to the complaint being filed and the complainant was kept informed of his resignation. The complainant had not even raised the plea that the Director was in-charge of the management of the Company at the relevant time in the complaint. That was also a case of PDCs. The resignation of the Director was accepted by the Company. The agreement of purchase/lease was entered into between the Company and the complainant in April 1995. The PDCs were issued in April 1995 itself. The Director resigned in May 1996. The complainant was informed of his resignation. One of the cheques was post-dated to January 1998 which came to be presented in June 1998 and was dishonoured. The resignation of the Director was not challenged as not genuine. Hence, there was no rebuttal of the presumption of the certified copy of Form No.32. It was observed that the Directors of the Company would retire by rotation and may or may not be reappointed to the Board (which is under the provisions of Sections

255 to 258 of the Companies Act). The Directors may also resign from the Company. There would be a change in the management of the Company. That change is not a private affair of the Company. Hence the Directors, who have resigned years before the cheque came to be dishonoured, could not be prosecuted. Such a Director cannot be taken to be in-charge of and responsible to the Company for the conduct of the business of the Company merely because at one point of time he played the role of a Director. It was further observed that person who had resigned to the knowledge of the complainant could not be taken to be a person in-charge of the Company when the cheque was dishonoured. It may be mentioned that, that was also a case where there was no dispute as to the factum of resignation of that Director.

12. The Hon'ble Apex Court in a case reported in 2010 (3) SCC 330, National Small Industries Corp. Ltd. vs. Harmeet Singh paintal and another has held as under:-

25) Apart from the legal position with regard to compliance of Section 141 of the Act, in the appeals of National Small Industries Corporation, respondent No.1- Harmeet Singh Paintal was no more a Director of the company when the cheques alleged in the complaint were signed and the same is evidenced from the Sixth Annual Report for the year 1996-97 of the accused company. The said report is of dated 30.08.1997 and the same was submitted with the Registrar of Companies on 05.12.1997 and assigned as document No. 42 dated 09.03.1998 by the Department. Those documents have been placed before this Court by respondent No.1 as an additional document. In view of these particulars and in addition to the interpretation relating to Section 141 which we arrived at, no liability could be fastened on respondent No.1. Further, it was pointed out that though he was an authorized signatory in the earlier transactions, after settlement and in respect of the present cause of action, admittedly fresh cheques were not signed by the first respondent. In the same way, in the appeal of the DCM Financial Services, the respondent therein, namely, DevSarin also filed additional documents to show that on the relevant date, namely the date of issuance of cheque he had no connection with the affairs of the company.

26) In the light of the above discussion and legal principles, we are in agreement with the conclusion arrived at by the High Court and in the absence of specific averment as to the role of the respondents and particularly in view of the acceptable materials that at the relevant time they were in no way connected with the affairs of the company, we reject all the contentions raised by learned counsel for the appellants. Consequently, all the appeals fail and are accordingly dismissed."

13. In view of what has been discussed above, the complaint so far as pertaining to petitioner no.2 only is quashed. Now the trial court shall proceed with complaint under law against rest of accused/ petitioners. Stay is vacated. Petitioners 1 and 3 to appear before court below on 1.5.2019