

(2003) 11 KAR CK 0057
In the Karnataka High Court
Case No : Cr.P. No. 1357 to 1361 of 2003

K.S. Jayanth Kumar and Others

APPELLANT

Vs

BNP Paribas

RESPONDENT

Date of Decision : 21-11-2003

Acts Referred:

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

Citation : (2005) 1 ALD(Cri) 10 : (2004) 2 BC 175 : (2003) ILR (Kar) 5137 :
(2004) 1 KarLJ 651 : (2004) 1 KCCR 476

Hon'ble Judges : M.S. Rajendra Prasad, J

Bench : Single Bench

Advocate : R.V. Naik and Shobith N. Shetty, for the Appellant; H.R. Katti, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Prasad, J.—All these petitions involve common questions of facts and law. The parties are also common and common arguments have been advanced by both sides. Hence, they are disposed of by the common order.

2. These petitions by Accused Nos. 3 to 10 are filed u/s 482 Cr.P.C. in C.C.Nos. 26056, 26057, 26058, 26059 and 26060 of 2003 on the file of the XIV Addl. C.M.M., Bangalore, wherein the learned Magistrate had taken cognizance and had issued process against the petitioners also for the offence u/s 138 of the Negotiable Instruments Act, challenging the legality and propriety of the orders impugned.

3. The Court has heard the arguments of Sri R.V. Naik and Sri Shobith N. Shetty, learned Counsel on behalf of the petitioners, and Sri H.R. Katti, learned Counsel on behalf of the respondent.

4. The learned Counsel for petitioners strenuously contended that the material on record clearly shows that the orders impugned are illegal and improper. The

learned Magistrate had not applied his judicial mind while taking cognizance of the case against the accused. The material on record also shows that the petitioners have been arrayed as A-3 to A-10 in the criminal cases. Patently, the petitioners accused are not the signatories to the cheques in question and they are merely the Directors, not participating in the affairs of the company. All the loan documents and the cheques had been issued by A-2 on behalf of A-1. Petitioner No. 3 had resigned from the post of Director much earlier to the date of issue of cheques in question. The amounts under the cheques have been the subject matter before the Debt Recovery Tribunal and none of the petitioners had been arrayed as parties and this itself is sufficient to accept the contentions raised by the petitioners. The learned Counsel relied upon the following decisions in support of his contentions:

- 1) Nucor Wires Limited, Bangalore and Others Vs. HMT (International) Limited, Bangalore,
- 2) State of Haryana Vs. Brij Lal Mittal and Others,
- 3) Sham Sunder and Others Vs. State of Haryana,
- 4) Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others,

Placing reliance on the ratio laid down in the said decisions, he prayed for allow in the petitions.

5. On the contrary, the learned Counsel for respondent -complainant strenuously contended that the material on record clearly shows that the petitions had been the Directors of the company. There has been prima facie case made out against the petitioners. There has been specific averment in the complaint that the petitioners, as Directors of the company, had been actively participating in the affairs of the company and in particular, with regard to the transactions in question. The accused could urge all the grounds before the Trial Court at the appropriate stage and this Court cannot, at this stage, exercise the powers u/s 482 Cr.P.C. and quash the proceedings against him. The learned Counsel relied upon the following decisions in support of his contentions:

- 1} 2002 Company Cases - Vol. 112, page 191
- 2) Sanjeev R. Apte Vs. Govt. of NCT of Delhi and Others,
- 3) 2003 Cri.LJ. 8
- 4) B. Venkat Narendra Prasad and Another Vs. State of A.P. and Another,

Placing reliance on the ratio laid down in the said decisions, he prayed for dismissal of the petitions.

6. The Court has carefully perused the material on record and has given its anxious thoughts over the rival contentions raised.

7. From the material on record, it is seen that there is no dispute that the petitioners had been the Directors of the company which had availed loan from the respondent - Bank and the cheques in question had been issued towards discharge of legal liability. From the material on record, it is seen that there has been a specific averments in paragraph - 4 of the complaint that A-2 to -10 were particularly appointed to look after, manage and supervise the day to day affairs of A-1 company and at all material items relevant to the present complaint, were and are the persons in charge of and responsible for the conduct of the business of A-1 company. This aspect has been seriously challenged to by the petitioners herein and they have also produced the Minutes of the company to show that none of them had been actively participating in the affairs of the company and in particular, with regard to the transactions in question.

8. It is pertinent to mention a portion of the provisions of Section 141 of the Negotiable Instruments Act, which runs thus:

"141. Offences by companies - (1) 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:

xxx xxx xxx"

The said statutory provision, makes it clear that whenever a company has been an accused for the offence u/s 138 of the N.I.Act, every person, who, at the time the offence had been committed, was in charge and was responsible to the company for the conduct of business of the company as well as the company shall be deemed to be guilty of the offence. In this regard, it is necessary to mention that the learned Counsel has relied upon a decision of this Court reported in Nucor Wires Limited, Bangalore and Others Vs. HMT (International) Limited, Bangalore, in support of his contentions, wherein this Court has held that, if the cheque had been issued by the Managing Director, who represents the company, then the company and the Managing Director, who has signed the cheque could be proceeded with and not all the Directors. On careful perusal of this decision, it is seen that in the said case, absolutely no allegations had been made against petitioners 4 to 8. It was also not stated that they had connived to cheat the complainant or any negligence or active part is pleaded by them in issuing the cheque. It is also observed by the Court in the said decision that it was not specifically averred that petitioners-4 to 8 had been in charge and responsible for the conduct of the business of the firm. Under those circumstances, this Court had held that it is only the signatory to the cheque and the company could be proceeded against. As stated earlier, at paragraph-4 of the complaint, there had been a specific averment to the effect that these petitioners had been appointed to look after, manage and supervise the affairs of the company and they were in charge and responsible for the conduct of the business of A-1 company. Having regard to these aspects, in the opinion of this

Court, the ratio laid down in the said decision cannot be pressed into service to spell out a case in favour of the petitioners, particularly in view of the fact that the merits or otherwise of the contentions raised before this Court will have to be thrashed out at the full dressed trial.

9. In view of the facts and circumstances of the case, the other two decisions of the Apex Court relied upon by the learned Counsel for petitioners, reported in *State of Haryana Vs. Brij Lal Mittal and Others*, , and *Sham Sunder and Others Vs. State of Haryana*, will not be of any assistance to the petitioners, particularly in the light of the specific averment in the complaint to the effect that the petitioners were in charge of the affairs of the company.

10. It is also necessary to mention another decision of the Delhi High Court, reported in *Sanjeev R. Apte Vs. Govt. of NCT of Delhi and Others*, , wherein it has been held that when there had been clear allegations in the complaint that a particular Director was in charge and responsible for the conduct of the business at the relevant time, and the offence was committed with his consent and connivance, it cannot be said that no specific role had been assigned to him and he is vicariously liable for commission of the offence. In view of the specific averments in the complaint, in the opinion of this Court, this decision also strengthens the case projected by the respondent.

11. It is also seen from a decision reported in 2003 Cri.LJ. 8, Delhi High Court, wherein it has been held that, in a case of dishonour of cheque, issued by a company, the question whether Director of company can be vicariously held liable for offence committed by the company, after she had ceased to be the Director, cannot be gone into by the Court in proceedings u/s 482 Cr.P.C. Having regard to the facts and circumstances of the case, the ratio laid down in this decision would be aptly applicable to the case projected by petitioner-3 in this case, wherein he has taken a specific contention that he had ceased to be a Director as on the date of the transactions in question.

12. It is also seen from another decision of Andhra Pradesh High Court, reported in *B. Venkat Narendra Prasad and Another Vs. State of A.P. and Another*, , wherein it has been held that the Court, sitting u/s 482 Cr.P.C., cannot decide the validity of the photostat copy of "Form 32" and it is for the accused to establish the same before the Trial Court. It is also observed in the said decision that there had been specific allegations in the complaint that the petitioners and other Directors had been responsible for the day to day affairs of the company and the same is sufficient to hold that the petitioners were liable for prosecution u/s 138 of the N.I.Act.

13. Having regard to the facts and circumstances of the case and the submissions made at the Bar and the settled law in this behalf, in the opinion of this Court, this Court cannot exercise the powers u/s 482 Cr.P.C. and make an exercise of considering the merits or otherwise of the contentions raised before this Court and it would be open for the petitioners to urge these aspects at the

appropriate stage before the Trial Court.

14. It is a settled principle of law that the powers u/s 482 Cr.P.C. are to be exercised with due care, caution and circumspection and will have to be exercised in rarest of rare cases.

15. Having regard to the facts and circumstances of the case and the settled law in this regard, this Court is of the opinion that the petitioners have not made out sufficient grounds for this Court to invoke the powers u/s 482 Cr.P.C. and grant the relief as sought for.

16. For the foregoing reasons, all the petitions stand dismissed.