(2002) 02 GUJ CK 0005

In the Gujarat High Court

Case No : Misc. Criminal Application No. 6546 of 2001

Mayurbhai N. Vyas APPELLANT

Vs

State of Gujarat and Another RESPONDENT

Date of Decision : 20-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141(1)

Citation : (2002) 22 GLH 781 : (2002) 3 GLR 70

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : S.V. Raju and Chetan K. Pandya, No. 1, for the Appellant; Punani, Assistant Public Prosecutor for Respondent No. 1 and Himanshu J. Mehta, for the Respondent

Final Decision : Allowed

Judgement

C.K. Buch, J.—Heard learned Counsel Mr. S. V. Raju with Mr. Chetan K. Pandya for the applicant.

2. The applicant has prayed for quashing criminal complaint registered vide Criminal Case No. 2705 of 2001 and process issued therein, pending in the Court of Judicial Magistrate (F. C.) at Gandhinagar for the offence punishable u/s 138 of the Negotiable Instruments Act. The applicant has invoked the jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, 1973.

3. The applicant has submitted that learned Magistrate ought not to have issued process against the applicant in light of the averments made in the complaint itself.

4. The original complainant is a Chartered Accountant and was rendering services to accused No. 1-Company. With a view to discharge liability of payment to the chartered accountant cheques of Rs. 6,00,000/- (Six lacs) bearing Nos. 1162576 and 1162578, both dated 1st January, 2001, drawn on Laxmi Vilas

Bank Ltd., Rajkot from the Account No. 3374 were issued by the present applicant, who was not signatory of the cheques issued to the complainant. It is the say of the complainant that the cheques were issued with a view to satisfy the liability of debt of the present applicant. It is contended that accused Nos. 2 to 6 are the directors of the Company.

5. According to the Counsel appearing for the applicant, accused No. 1 - Company has committed the alleged offence u/s 138 of Negotiable Instruments Act and the applicant was not in-charge of the day-to-day affairs of the business of the Company nor he was responsible for the conduct of the company''s business, and therefore, he cannot be directed to face a criminal trial.

By placing reliance on the decision of K.P.G. Nair Vs. Jindal Menthol India Ltd., , learned Advocate has argued that in case where there is no allegation in the complaint to the effect that the particular director was in-charge and was responsible for the conduct of the business of the company, all the directors cannot be held liable for the alleged conduct of the Company.

6. In the cited case, the accused-Company has issued two cheques on March 15, 1998 and one cheque on March 24, 1998. Those cheques were presented in the month of May, 1998, but were returned dishonoured on 14th May, 1998. Defaulter-company was issued with a notice required under the law and ultimately it was prosecuted. The appellant-director i.e. Mr. K. P. G. Nair sent a reply in response to the statutory notice intimating that he was not in-charge of the affairs of the Company on the date of the alleged offence.

7. On perusal of the complaint, nowhere it is stated that on the date of the alleged offence, the applicant was in-charge of or was responsible to the company for the conduct of the business of the Company. It would be appropriate to quote the relevant part of Section 141 of Negotiable Instruments Act. Sub-section (1) of Section 141 of Negotiable Instruments Act says that :

"Section 141(1) : If the person committing an offence u/s 138 is a company, every person who, at the time of 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 the proceeded against and punished accordingly."

8. Appreciating these provisions, the Apex Court in Para 8 of the decision in the case of K. P. G. Nair (supra) has observed that :

"From perusal of Section 141, it is evident that in a case where a company committed offence u/s 138 then not only the company, but also every person who at the time when the offence was committed, was in-charge of and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the offence and liable to be proceeded against and punished accordingly. It follows mat a person other than the company can be proceeded against under those provisions only if that person was in-charge of and was responsible to the company for the conduct of its business."

According to the Apex Court, the High Court had committed an error and had misdirected itself while coming to the conclusion in interpreting of Section 141(1) of the Act.

9. Mr. S. V. Raju, learned Advocate for the applicant has also drawn attention of this Court to one another decision of the Apex Court in State of Haryana Vs. Brij Lal Mittal and Others, . Considering the relevant provision of that Act i.e. the provision of Food Adulteration Act, the Apex Court has observed in Para 8 of the judgment that :

"It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in-charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director a person can be in-charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in-charge of the company and also responsible to the company for the conduct of its business."

10. Whether any specific allegation in the complaint itself as to the effect that who was in-charge of and was responsible to the company for the conduct of business of the accused-Company is necessary or not, is the important question which has been brought before this Court during the course of submission of Mr. Raju, but without answering this question, the case of the present applicant can be considered on a different footing as it is averred by the complainant in the complaint itself that accused No. 3-Harish R. Premani and accused No. 4-Gordhanbhai J. Bambhania were in-charge of day-to-day business of the accused No. 1-Company. Para 9 of the complaint says that :

"Accused No. 2-Shri Mayurbhai Vyas, Accused No. 5-Kamalkumar Vyas and Accused No. 6-Rekha K. Vyas informed of the day-to-day businesses and their consent was obtained regularly."

This averment clearly indicates that the present applicant-Mayurbhai N. Vyas was not concerned with the day-to-day conduct of the business of the company nor he was in-charge of the business. It is submitted that the present applicant is in regular service in some other independent organization.

11. Ms. Punani, learned A.P.P. has resisted this petition stating that this can be stated to be defence plea and accused should agitate such plea during the course of trial and at the initial stage, the complaint should not be turned down in view of the settled legal position. She has placed reliance on the decision of R.P. Kapur Vs. The State of Punjab, wherein the Apex Court has held that revisional or

inherent powers for quashing the proceedings at initial stage should be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value and accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the F.I.R. or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings. It is further submitted by Ms. Punani that the present case does not fall in such category. She has also drawn attention of this Court to a decision in the case of Rama Shankar Mani Tripathi v. State of Bihar and Ors. 2001 AIR SCW 5188 (2) wherein the Apex Court has held that for quashing criminal proceedings, the powers vested with the Court u/s 482 - inherent powers should be sparingly exercised. It was further held therein that the High Court was not justified in shifting the evidence and coming to conclusion that initiation of complaint proceedings was with some oblique motive for wreaking vengeance.

12. It is too well settled that the High Court should exercise its power u/s 482 of Cr.P.C. sparingly and on consideration of the material at its face value, if it comes to a conclusion that still no offence is made out on the plain reading of the complaint, it would be open for the Court to invoke its inherent jurisdiction. The present case is not a case where it would be required to shift or appreciate the evidence. The above-referred provisions of Section 141 of Negotiable Instruments Act provides for the person who can be held guilty under the deeming fiction. So, on facts stated in the complaint or the allegations made by the complainant, would be relevant. The present case would fall in the category of a case where on the uncontroverted allegations made in the complaint, no prudent person could have reached a just conclusion that there are sufficient grounds to proceed against the accused. This is a case wherein the complainant himself has accepted in Para 8 of the complaint that accused No. 3-Shri Harish R. Premani. and accused No. 4-Shri Gordhanbhai J. Bambhania were in-charge of the business and day-to-day affairs of the company. So, the present applicant as a director cannot be asked to face prosecution when some particular facts are accepted in the complaint itself. So, the resistance of learned A.P.P. being not well-founded, is not accepted.

13. For short, the petition is allowed. The Criminal Case No. 2705 of 2001 pending in the Court of Judicial Magistrate (F.C.) at Gandhinagar and process issued against the present applicant is hereby quashed and set aside. It is clarified that the trial shall and can proceed against the other directors except the present applicant. Rule is made absolute. Yadi to the learned J.M.F.C., Gandhinagar.

