(2012) 09 DEL CK 0261

In the Delhi High Court

Case No : Criminal L.P. 290 of 2010

M.M. Lal APPELLANT

Vs

State NCT of Delhi and Another RESPONDENT

Date of Decision : 14-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(4)
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2012) 9 AD 81 : (2013) 2 BC 108 : (2013) 196 DLT 453 : (2012) 4 JCC 284

Hon'ble Judges : A.K. Pathak, J

Bench : Single Bench

Advocate : Sunil Sethi, for the Appellant; Mukesh Gupta, APP, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—By this petition u/s 378(4) Cr.P.C., petitioner seeks leave to appeal against the judgment dated 31st March, 2010 passed

by Trial Court, whereby complaint u/s 138 of the Negotiable Instruments Act, 1881 (for short hereinafter referred to as ""the Act"") has been

dismissed and respondent No. 2 has been acquitted of the charge u/s 138 of the Act. Brief facts are that the petitioner filed a complaint u/s 138 of

the Act against respondent No. 2, proprietor of M/s. Tina Toni Creations, New Delhi. It is alleged that the respondent No. 2 was proprietor of

M/s. Tina Toni Creations. He had issued a cheque bearing No. 822256 dated 1st October, 1994 for Rs. 10.5 lacs in favour of petitioner in

discharge of his loan liability of Rs. 10 lacs, which was taken on interest @ 20% per annum.

2. On presentation, cheque was returned dishonored with the remark ""funds

insufficient"", vide a return memo dated 3rd October, 1994. Amount

involved in the cheque was not paid within 15 days of service of legal notice dated 6th October, 1994, hence, respondent No. 2 had committed

offence punishable u/s 138 of the Act.

3. During the trial, respondent No. 2 has succeeded in showing that he was not the sole proprietor of M/s. Tina Toni Creations. Shri Manmohan

Dhawan was the proprietor. Trial Court has noted that Manmohan Dhawan was not impleaded as proprietor of said firm. Respondent No. 2

Gopal was, thus, not liable to pay the cheque amount.

4. It is well settled that a sole proprietorship firm has no separate legal identity and in fact is a business name of the sole proprietor. Thus any

reference to sole proprietorship firm means and includes sole proprietor thereof and vice versa. Sole proprietorship firm would not fall within the

ambit and scope of Section 141 of the Act, which envisages that 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 be proceeded against and punished accordingly. Company

includes a partnership firm and any other association of individuals. The sole proprietorship firm would not fall within the meaning of partnership

firm or association of individual. Vicarious liability cannot be fastened on the employees of a sole partnership firm, by taking aid of Section 141 of

the Act, inasmuch as, no evidence has been led to show that the business was run by the respondent No. 2.

5. Learned counsel for the petitioner has contended that DW1 has produced ''Letter of Mandate'' executed by the proprietor of M/s Tina Toni

Creations, which shows that the respondent No. 2 was authorized to operate bank account of the firm. In my view, ""Letter of Mandate"" issued by

the sole proprietor in favour of respondent No. 2 will not make him personally liable to pay the debts of the firm. A perusal of Mandate clearly

indicates that the respondent No. 2 was only given authority to draw bills, cheques etc. in the said account but any liability on that count was to be

that of sole proprietor. The clause to this effect reads thus ""This mandate if not revoked in my/own life time shall be binding upon my/own estate and effects and any legal representatives unless a written notice of my/own death is given to you"". That apart mandate binds the parties to the letter

of ''Mandate'', that is bank and the sole proprietor and not the outsiders.

6. Accordingly, I do not find any perversity in the view taken by trial court that the cheque having been issued from the account maintained by M/s.

Tina Toni Creations of Shri Manmohan Dhawan respondent No. 2, namely, Gopal could not have been prosecuted and punished. Petition is, thus,

dismissed.

