**(2006) 04 MAD CK 0004**

**In the Madras High Court**

**Case No :** Criminal O.P. No''s. 12865, 12870 and 12878 of 2003 and Criminal M.P. No''s. 4573, 4575 and 4577 of 2003

Mr. Lachhman P. Udhani, Mr. Deepak L. Udhani and Mr. Ashwin L. Udhani — APPELLANT

Vs

Redington (India) Ltd. — RESPONDENT

**Date of Decision :** 25-04-2006

**Acts Referred:**
Criminal Procedure Code, 1973 (CrPC) — Section 482
Evidence Act, 1872 — Section 14, 74, 79
Negotiable Instruments Act, 1881 (NI) — Section 138

**Citation :** (2007) 3 BC 159 : (2007) 2 CivCC 135 : (2006) 133 CompCas 855 : (2006) CriLJ 3076 : (2006) 4 CTC 43 : (2006) 4 RCR(Criminal) 676

**Hon'ble Judges :** M. Jeyapaul, J

**Bench :** Single Bench

**Advocate :** S. Thiruvengadam, for the Appellant; V.T. Narendiran, for the Respondent

# Judgement

M. Jeyapaul, J.—The petitioners are the accused 2,3 and 5 in C.C. Nos. 4011, 4012 and 4013 of 2002 pending on the file of the learned

IX Metropolitan Magistrate, Saidapet, Chennai, launched as against them and others for the offence u/s 138 of the Negotiable Instruments Act by

the respondent-complainant.

2. The respondent-complainant, have alleged that the petitioners and others, who are the Directors of M/s. Gallant Computers Pvt Ltd., placed

orders for the purpose of computer peripherals and accessories and towards the outstanding amounts payable for purchase of the said materials.

The sixth accused and the fourth accused issued cheques in their capacity as Directors of the first accused-company. When the cheques were

presented for collection, those cheques were returned with an endorsement

 

""Exceeds Arrangement"". After issuing statutory notice, the complaints

u/s 138 of the Negotiable Instruments Act were filed as against the first accused-company and the Directors thereof including the petitioners

herein, as there was no response from them to make payment of the amount under the cheques.

3. It is contended in the petitions filed for quashment of the criminal proceedings that as the second, third and fifth accused, who are the petitioners

herein, had resigned from the first accused-company long prior to the issuance of the cheques, no criminal liability can be fastened on them u/s 138

of the Negotiable Instruments Act.

4. Learned counsel for the petitioners would submit that inasmuch as the petitioners were no longer in the conduct of the business of the company,

as they have already resigned therefrom, they cannot be called upon to answer the criminal liability.

5. Learned counsel for the respondent would submit citing a judgment passed by me in Mrs. K. Umadevi Vs. V. Manikandan, Proprietor,

Manisha Traders, that when there is a specific averment in the complaint that the accused-Directors were responsible for the conduct of the

business of the company and such allegation was disputed by the Directors, the disputed fact will have to be adjudicated only during the course of

trial.

6. In a case reported in 2001 Com Cases 518 (I. Dharmapaul v. D. Chandrasekaran), where the exact part played by one of the directors of the

company had not been averred in the complaint, B. Akbar Basha Khadiri, J., has observed as follows:-

That it was not necessary to go into the question what was the part played by the petitioner regarding the management of the company, it was

sufficient that there was an averment that he was at the helm of affairs of the company.

7. In a case reported in 2003 Comp Cases 403 (M.S. Rama Mohan Rao v. Mrs. S. Nagu Bai), where the resignation letter of one of the directors

of the company was produced to establish the disassociation of one of the directors from the company, A.PACKIARAJ, J., has observed as

follows:-

Though the petitioner produced the concerned letter addressed to the complainant in the Court, showing the resignation of the petitioner from the

company as director, the Court sitting in revisionary jurisdiction could not go into the preliminary issue, since these were matters that could be

decided only by letting in evidence.

8. In a case reported in S.V. Muzumdar and Others Vs. Gujarat State Fertilizer Co. Ltd. and Another, where one of the directors of the company

disputed the responsibility fixed on him with respect to the conduct of the business of the company, the Hon''ble Supreme Court has observed as

follows:-

Whether a person is in charge of or is responsible to the company for the conduct of the business is to be adjudicated on the basis of materials to

be placed by the parties.

9. In the aforesaid three cases, the extract of Form-32 to establish the resignation of a director of the company had not been projected.

10. Form-32 filed with the Registrar of Companies is a public document as per Section 74 of the Indian Evidence Act, 1872. When the certified

extract of such a public document is filed, the Court shall presume as to the genuineness of such certified copies as per Section 79 of the said Act.

11. The sanctity attached to such public documents and the presumption the Court is bound to raise as to the genuineness of such documents have

not been brought to my notice at the time when the judgment in Mrs. K. Umadevi Vs. V. Manikandan, Proprietor, Manisha Traders, was

pronounced by me. In view of the importance of the public document as detailed above, the ratio laid down by me in the aforesaid judgment cries

for reconsideration and restatement. The march of law should be dynamic and it should never be static. If a Judge is afflicted with infallibility

syndrome, the space for growth of law is unfortunately smothered stifled.

12. In a case where certified copy of Form-32 is filed by the accused director to show that he had resigned prior to the issuance of the cheque and

the challenge thereto is innocuous inasmuch as no counter credential is projected by the complainant, the Court has to necessarily accept the same

and relieve such a director from the ordeal of trial. It will be a misuse of process of law if such an accused director who had resigned long prior to

the issuance of the cheque and severed his umbilical root in the company is implicated in a case u/s 138 of the Negotiable Instruments Act.

 

13. It is always safe to take the date of registration of Form-32 to determine the date of disassociation of the accused director from the conduct of

the business of the company as there is chance for antedating the date of resignation in order to save the accused-director from prosecution.

14. In this case, the petitioners have resigned on 18.12.2001 from the company and the same was registered with the Registrar of Companies

through Form-32 as on 27.12.2001 long prior to the issuance of the cheque. Therefore, the petitioners cannot be fastened with criminal liability u/s

138 of the Negotiable Instruments Act.

15. In the result, the criminal proceedings as against these petitioners, who are accused 2,3 and 5, in C.C. Nos. 4011, 4012 and 4013 of 2002

pending on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai stand quashed. The Crl.O.P. Nos. 12865, 12870 and 12878 of

2003 stand allowed. Consequently, connected criminal miscellaneous petitions stand closed.