
(2008) 05 BOM CK 0010

In the Bombay High Court

Case No : Criminal Application No's. 3121 to 3123 of 2006

Mrigendra Jalan and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 06-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 141(1), 141(2)

Citation : (2009) CriLJ 104 : (2008) 5 MhLj 169

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : A. Bhide, for the Appellant; N.R. Saboo, for respondents Nos. 2(a) to 2(b), for the Respondent

Judgement

A.P. Lavande, J.—Heard Mr. Bhide, learned Counsel for the applicants and Mr. Saboo, learned Counsel for the respondent Nos. 2(a) and 2(b). None for respondent No. 1.

2. All these three applications filed u/s 482 of the Code of Criminal Procedure ("the Code" for short) are being disposed of by common judgment since issues involved in the applications are identical and the parties are the same. The applicants challenge the judgments and orders dated 22-6-2006 passed by the Additional Sessions Judge, Khamgaon, dismissing Criminal Revision Application Nos. 79/04, 73/04, 71/05, 80/04, 78/04 and 72/04.

3. The applicant Nos. 2 to 4 are the Directors of the Maikal Fibres Ltd., and applicant Nos. 5 to 6 are employees of the said Company. Respondent No. 2 in the above applications filed Summary Criminal Case Nos. 581/2003, 501/2003, 470/2003 in the Court of Judicial Magistrate, First Class, Shegaon against the present applicants for dishonour of three cheques dated 20-2-2003, 26-2-2003 and 5-3-2003 for Rs. Eight lakhs each. Learned Magistrate issued process against the applicants in all the three cases. The present applicants challenged the orders issuing process against the applicants before the Revisional Court. The

Revisional Court by the impugned judgments and orders has dismissed the revision applications.

4. The applicants challenged issuance of process against them by the learned Magistrate on the ground that the applicants could not have been prosecuted for the alleged offence u/s 138 of the Negotiable Instruments Act (hereinafter referred to as "the Act") inasmuch as there was no averment that at the time of commission of offence, the applicants were in charge of and were responsible for the conduct of the business of the company and, therefore, the applicants could not have been held liable in terms of Section 141 of the Act. The Revisional Court rejected the said contentions on behalf of the applicants. Therefore, the applicants have filed the present applications u/s 482 of the Code.

5. Mr. Bhide, learned Counsel for the applicants submitted that applicant Nos. 2 to 4 are the Directors of the Company and applicant Nos. 5 and 6 are the employees of the Company. Insofar as the applicant Nos. 2 to 4 are concerned, they cannot be prosecuted merely on the ground that they are Directors of the Company and insofar as the applicant Nos. 5 and 6 are concerned, they being only employees and in the absence of any specific role being attributed to them in the complaint, no prosecution for offence punishable u/s 138 of the Act is maintainable against them. In support of his submissions, Mr. Bhide, learned Counsel placed reliance upon judgment of the Apex Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, .

6. Per contra, Mr. Saboo, learned Counsel for respondent Nos. 2(a) and 2(b)/ original complainants submitted that necessary averments have been made in the complaints filed by respondent No. 2 and, therefore, criminal proceedings initiated against the applicants are not liable to be quashed at this stage. Insofar " as the applicant Nos. 2 to 4 are concerned, Mr. Saboo submitted that they are admittedly Directors of the Company and as such the criminal proceedings cannot be quashed at this stage. In support of his submissions, Mr. Saboo placed reliance upon the judgment of the Apex Court in N. Rangachari v. Bharat Sanchar Nigam Limited 2007 (2) Mh.L.J. 248 : 2007 (5) Mh.L.J. 375 : AIR 2007 SC 1662./ p> 7. I have carefully considered the submissions made by learned Counsel for the parties and perused the judgments relied upon.

8. Section 141 of the Act reads as under:

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:

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 any body corporate and includes a firm or other association of individuals; and

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

9. In case of SMS Pharmaceuticals Ltd. (supra) the Apex Court in para 20 observed thus:

In view of the above discussion, our answers to the questions posed in the Reference are as under

(a) It is necessary to specifically aver in a complaint u/s 141 that at the time the offence was committed, the person accused was in-charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint the requirement of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable u/s 141 of the Act. A director in a company cannot be deemed to be in-charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in-charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in-charge of the company and responsible to the company conduct of its business. When that is so, holders of such positions in a company become liable u/s 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in-charge of and responsible for the conduct of

business of the company. Therefore, they get covered u/s 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under Sub-section (2) of Section 141.

10. In *N. Rangachari* (supra) relied upon by Mr. Saboo, the Apex Court considered several judgments of the Apex Court including the judgment in *SMS Pharmaceuticals Ltd.* and in paragraphs 18 and 19 observed thus:

18. In a case on hand, reading the complaint as a whole. It is clear that the allegations in the complaint are that at the time at which the two dishonoured cheques were issued by the company, the appellant and another were the Directors of the company and were in-charge of the affairs of the company. It is not proper to split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the appellant and the other are not alleged to be persons in-charge of the affairs of the company. Obviously, the complaint refers to the point of time when the two cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. We have no hesitation in overruling the argument in that behalf by the learned Senior Counsel for the appellant.

19. We think that, in the circumstances, the High Court has rightly come to the conclusion that it is not a fit case for exercise of jurisdiction u/s 482 of the Code of Criminal Procedure for quashing the complaint. In fact, an advertence to Sections 138 and 141 of the Negotiable Instruments Act shows that on the other elements of an offence u/s 138 being satisfied, the burden is on the Board of Directors or the Officers in-charge of the affairs of the company to show that they are not liable to be convicted. Any restriction on their power or existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial such a restriction or to show that at the relevant time they were not in-charge of the affairs of the company. Reading the complaint as a whole, we are satisfied that it is a case where the contentions sought to be raised by the appellant can only be dealt with after the conclusion of the trial.

11. Perusal of the complaint filed against the present applicants discloses that in the complaints, respondent No. 2 has stated that, "that rest of all the accused are managing the affairs of accused No. 1 and are responsible for the act of accused No. 1." It is, therefore, evident that the averments made in the complaint satisfy the tests laid down in *N. Rangachari's* case. Insofar as the liability of the applicant Nos. 2 to 4 are concerned, admittedly, they are Directors of the Company and, therefore, the ratio laid down in *N. Rangachari* is squarely applicable in the present case. The respondent No. 2 has averred that the applicant Nos. 2 to 4 being the Director of the Company were in-charge of the affairs of the Company and, therefore, in my considered opinion, the issuance of process by the learned Magistrate against applicant Nos. 2 to 4 for offence punishable u/s 138 of the Act cannot be faulted. Insofar as applicant Nos. 5 and

6 are concerned admittedly they are officers employed by the Company. Nowhere in the complaint respondent No. 2 has mentioned as to how they are responsible for the conduct of the business of the Company nor it has been averred that the offence has been committed by them with their consent or connivance or is attributable to any neglect on their part. In my opinion, therefore, the learned Magistrate was not right in issuing process against the applicant Nos. 5 and 6, who are only employees of the Company. Consequently the Revisional Court was also not justified in dismissing the revision applications against the applicant Nos. 5 and 6. Therefore, the orders passed by learned Magistrate, Shegaon issuing process against applicant Nos. 5 and 6 in Criminal Complaint Nos. 581/03, 501/03 and 470/2003 are liable to be quashed and set aside and are hereby quashed and set aside. Consequently, the impugned orders passed by the Revisional Court insofar as the applicant Nos. 5 and 6 are concerned are quashed and set aside and the criminal proceedings initiated against them for offence punishable u/s 138 of the Act are quashed and set aside. For the reasons aforesaid, Rule is made partly absolute. The applications are dismissed insofar as applicant Nos. 2 to 4 are concerned and are allowed insofar as applicant Nos. 5 and 6 are concerned. Considering the facts and circumstances, there shall be no order as to costs. Interim orders passed by this Court in all the three applications are vacated. The applicant Nos. 2 to 4 to appear before the Judicial Magistrate First Class, Shegaon on 10th June, 2008 for further directions. Considering that the complaints were filed in the year 2003, the learned Magistrate shall dispose of the cases expeditiously and in any case on or before 30th December, 2008.