
(1998) 11 BOM CK 0075

In the Bombay High Court

Case No : Criminal Writ Petition No. 869 of 1997

M/s. Ancient Investment Pvt. Ltd. and others

APPELLANT

Vs

Kotak Securities and another

RESPONDENT

Date of Decision : 30-11-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142

Citation : (1999) 1 ALLMR 538 : (1999) 5 BomCR 107 : (1999) BomCR(Cri) 107 : (1999) 4 RCR(Criminal) 446

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : A.S. Khandeparkar, instructed by B. Amin and Co., S.R. Shinde, app, for the Appellant; Amit Desai and Prakash Naik, for the Respondent

Judgement

D.G. Deshpande, J.—Heard Mr. Khandeparkar for the petitioner and Mr. Amit Desai for the respondent No. 1 complainant. Petitioners before this Court are accused Nos. 6, 7 and 8 in the complaint filed by the respondent No. 1 complainant u/s 138 of the Negotiable Instruments Act. From the allegations in the complaint and the very submissions of the Advocate for the complainant, it is clear that the liability in this case of the debt was of accused No. 6 which is a company and accused Nos. 7 and 8 who were the Directors of the accused No. 6. The cheque in question was issued as alleged by the complainant by accused No. 1 which is a company and was signed by accused No. 2 as Director of the Company. The question that is raised by the petitioners in this case is whether accused Nos. 6, 7 and 8 who are the petitioners before this Court could be prosecuted by the complainant in view of the provisions of section 138 of the Negotiable Instruments Act.

2. On the other hand it was contended by the Counsel for the complainant that the complainant has in his complaint given details of the intrinsic connection between all the accused and the close relation his of all the Directors, which all the accused involved. He also contended that all the accused had given a

common reply, which also prima facie prove the contention of the complainant regarding the close connection between all the accused. Lastly, he contended that if the liability was of accused No. 6, then they could not be allowed to escape the liability by pointing the finger at some other company of which they had full control. Counsel for the complainant relied upon a judgment of this Court reported in 1995(2) Crim 636 Brijlal v. Jugal Kishore & others.

3. A perusal of this judgment shows that in that case the liability to pay was of Company X and at their instance cheques were issued by the Company Y (both partnership firms). When the cheque was dishonoured Company X was prosecuted only and not Y. When the matter came to this Court, it was held that so long as the liability was there from which account the cheques were paid did not matter and the company whom the liability was there could not raise the defence that cheque was issued by the other company.

4. However, in my opinion this judgment is of no help to the complainant. The situation in the present case is exactly reverse. In the reported case referred to above, the partnership which had the initially liability was joined as accused and not the company or partnership which had issued the cheque. In the instant case the company which had issued the cheque is joined as accused Nos. 1 and 2 and the company which has incurred the liability i.e. accused Nos. 6, 7 and 8 are also joined. Since offence under the Negotiable Instruments Act are very specific, it has to be seen whether the civil liability or liability giving rise to a civil dispute could be converted into a criminal liability. Section 138 of the Negotiable Instruments Act lays down that the person i.e. drawer of the cheque shall be deemed to have committed an offence and shall be punishable as provided in that section. This section therefore makes reference to the person i.e. drawer of the cheque and in that since it is prima facie accused Nos. 1 and 2 who are liable, if at all the complainant succeeds in proving his contentions before the trial Court. Further, as per section 141 what is laid down is if the offences u/s 138 committed by the 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 If this definition or if the provisions of section 141 are strictly applied to the present case, accused No. 6, i.e. the company and accused Nos. 7 and 8 who are the Directors cannot be said to be in charge of or responsible to the company i.e. accused No. 1. All the companies are having separate entities and whether there is intrinsic connection between the accused No. 2 and other companies or its Directors because of their Directors relationship with each other or the Directors indirect control, their acts do not come under and are not covered by section 141. Lastly it was contended by the complainant in view of the allegations in the complaint, an opportunity was required to be given to the complainant to prove those allegations before the trial Court. The defence of the petitioners cannot be accepted since the liability u/s 138 and 141 is very specific and since the Court can on the basis of the facts made available to this Court come to the conclusion regarding the involvement of accused Nos. 6/7 and 8 in

the complaint or in the offence u/s 138, there is no necessity of allowing the parties to go for the trial for proving their respective contentions against each other. In view of this, the following order is passed:

ORDER

Petition allowed. Rule made absolute. Process u/s 138 of the Negotiable Instruments Act, issued against the present petitioners is quashed. The trial Court is directed to complete the trial preferably within a period of six months from the date of receipt of this order.

Certified copy expedited.

5. Petition allowed.