

(2000) 09 KAR CK 0036

In the Karnataka High Court

Case No : Criminal Petition No's. 1583 to 1586 of 2000

M.S. Krishnappa and another

APPELLANT

Vs

Capt. M.A. Madappa

RESPONDENT

Date of Decision : 29-09-2000

Acts Referred:

Companies Act, 1956 — Section 391
Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 142
Reserve Bank of India Act, 1934 — Section 45 QA (2)

Citation : (2001) CriLJ 34 : (2000) ILR (Kar) 4701 : (2001) 2 KarLJ 309 :
(2001) 3 RCR(Criminal) 269

Hon'ble Judges : H.N. Narayan, J

Bench : Single Bench

Advocate : M/s. Bangalore Law Associates, for the Appellant; M/s. Hegde Associates and M/s. Kamath and Kamath, for the Respondent

Judgement

H.N. Narayan, J.—Since common questions of facts and law are involved in all these petitions, by consent of the learned Counsel appearing on both sides, they are clubbed for the purpose of disposal, heard and disposed of by this common order.

2. In all these petitions filed u/s 482 of the Cr. P.C. the accused persons have challenged the order of the learned Magistrate, Madikeri dated 5-5-2000 taking cognizance of the offence alleged punishable u/s 138 of the Negotiable Instruments Act and issue of notice to them and prayed this Court to quash the same.

3. The facts leading to filing of these petitions are these:

The respondents herein presented separate complaints u/s 200 of the Cr. P.C. read with Sections 138 and 142 of the Negotiable Instruments Act inter alia alleging that the Vijaya Group of Companies is a limited Company registered under the Companies Act, having its Head Office at Bangalore and several

branches throughout Karnataka. The 1st accused is its Chairman, the 2nd accused is the Managing Director and accused Nos. 3 to 7 are the Directors of Vijaya Commercial Credit Limited. The 8th accused is the General Manager and 9th accused is the Assistant General Manager of the said Company and they are the authorised signatories for the administration of financial matters of the said Company and therefore they are personally responsible for the administration of the Company.

4. As per the public advertisement issued by the Company, the Company called upon the individuals to invest their amounts and offered several benefits. Therefore, the complainants invested certain amount of money in the said Company, the Company has accepted deposits from several individuals running to several crores. The Company was functioning for some years till 1999 and thereafter became defunct and completely closed down. The complainants approached the officials of Madikeri Branch of the Company for refund of the amount and the officials issued cheques both for the principal and interest which was due on the said amount, with a request to present them for encashment in October 1999 and on presentation, the cheques were returned with the endorsement "FUNDS INSUFFICIENT" and an intimation was duly given to the payees. Thereafter, notice as contemplated u/s 138(b) of the Negotiable Instruments Act is issued calling upon the accused to pay the cheque amount within 15 days from the date of service of notice. The accused failed to honour the demand within the time stipulated till the presentation of the complaints. Therefore, they initiated these proceedings well-within time provided under the Act for taking action u/s 138 of the Negotiable Instruments Act. The learned Magistrate before whom these complaints were presented, perused them, took cognizance of the offence alleged, recorded the sworn statement of the complainants and in his opinion there was sufficient prima facie material for proceeding against the accused u/s 138 of the Negotiable Instruments Act and therefore ordered issue of process to them.

5. The contentions canvassed on behalf of the accused-petitioners for quashing the criminal proceedings are that the proceedings before the learned Magistrate is without jurisdiction and the respondents-complainants are bound by the order passed by the Company Law Board u/s 45-QA(2) of the Reserve Bank of India Act, 1934. Since the Company has applied for sanction of a scheme u/s 45-QA(2) of the Reserve Bank of India Act, 1934 and the scheme having been sanctioned by the Company Law Board vide scheme dated 16-5-2000 at Annexure-B, the respondents-complainants are not entitled to invoke the jurisdiction of the Magistrate u/s 138 of the Negotiable Instruments Act and therefore the cognizance taken contrary to the scheme enumerated in accordance with the RBI Act tantamount to abuse of the due process of law and is liable to be quashed.

6. Reiterating these contentions, learned Counsel for the petitioners contended that the complainants who were parties to the proceeding before the Company Law Board are bound by the scheme formulated by the Company Law Board and

that initiation of criminal proceedings and prosecuting the petitioners-accused is not permissible in law and therefore the learned Magistrate is in error in taking cognizance of the offence alleged against them.

7. Learned Counsel for the respondents however has justified the order of the learned Magistrate.

8. At the outset, it is desirable to point out that the petitioners have not questioned any other infirmity in the presentation of the complaints. It is not their case that they have not issued the cheques for the amounts stated therein in favour of the complainants which subsequently bounced for want of sufficient funds in their accounts and that the complainants served them a notice as contemplated u/s 138(b) of the Act and that they failed to pay the money within the stipulated period of 15 days and the complaints were presented within the time provided u/s 142(b) of the Act. Therefore, the only point which needs consideration in these petitions as contended by the learned Counsel for the petitioners is whether the learned Magistrate has no jurisdiction to initiate criminal proceedings by taking cognizance specially after the Company Law Board has formed a scheme and there is a bar u/s 45-QA(2) of the RBI Act.

9. In the early part of 2000, the petition was made by the Chartered Accountant and the Advocate for the accused-petitioners on behalf of M/s. Vijaya Commercial Credit Limited for forming a scheme of rescheduling repayment of deposits. The Company Law Board after issue of a public notice to the concerned including the depositors passed an order dated 15-5-2000 forming a scheme and the Bench took up the supervision of reviewing the progress made by the Company in implementation of the scheme from time to time and make such order as may be deemed necessary safeguarding the interests of the depositors as well as the Company. In the course of the order, the Company Law Board commented upon the Reserve Bank of India insofar as the provisions of Section 45-QA, at para 6 as follows.-

"The provisions of Section 45-QA do not contemplate any scheme of rescheduling repayment otherwise than in accordance with the terms and conditions of the deposit. No scheme can be entertained by the Company Law Board u/s 45-QA without hearing such depositors. Section 391 of the Companies Act, 1956 specifically provides for formulating scheme of compromise or arrangement with creditors by an order of the High Court.

The scheme should make provision for payment of matured and yet to mature deposits.

The Company should pay interest at the contracted rate till the date of payment of the deposit in full".

10. There are other grounds made available in the order. It is seen from the submissions made that the accused-petitioners have failed to furnish the value of the property held by them and whether they are in a position to pay the interest

on the deposits as formulated. From the order of the CLB, it is seen that many of the depositors were not aware of the legal consequences of default committed by the Company and to approach the CLB etc. The order of the CLB does not disclose whether the accused have also approached the Company Court u/s 391 of the Companies Act. From the objections filed by the depositors before the Company Law Board, it is seen that they were not agreeable for the scheme or the promise made by the accused. That apart, the question which calls for consideration is whether the order of the Company Law Board puts a bar upon the complainants to prosecute the accused for contravention of the provisions of Section 138 of the Negotiable Instruments Act which is penal in nature. Learned Counsel for the petitioners has not placed before me any law or decision which puts a bar for initiation of criminal action as provided u/s 138 of the Negotiable Instruments Act.

11. Similar question though not identical came up before the Apex Court in Pankaj Mehra and Another Vs. State of Maharashtra and Others, . The Supreme Court was considering the winding up proceedings before a Company Court in which a liquidator was appointed and while considering the provisions of Sections 441(2) and 536(2) of the Companies Act, the Apex Court held that a Company cannot escape from penal liability. At para 26, the Apex Court held that:

"Section 138 of the Negotiable Instruments Act created a statutory offence which on the confluence of the various factors enumerated therein, commencing with the drawing of the cheque and ending with the failure of the drawer of the cheque to pay the amount covered by it within the time stipulated, ripens into a penal liability".

12. In the light of the said observation, it is further held that a Company cannot escape from penal liability u/s 138 of the Negotiable Instruments Act on the premise that the petition for winding up of the Company was presented prior to the Company being called upon by a notice to pay the amount of the cheque.

13. In these matters, cause of action arose long back when a notice of demand contemplated u/s 138 of the Act was served on 17-11-1999 and long after that period, the petitioners presented the petition before the Company Law Board and that the Company Law Board has passed an order u/s 45-QA. There is nothing in the language used in the provisions of Section 45-QA or any other provisions therein prohibiting a party to a bounced cheque from initiating penal action against the drawer of the cheque for his failure to pay the cheque amount within the stipulated date. Therefore, I find no merit in the contention canvassed for the petitioners that the order of the Law Board binds the complainants-respondents from initiating penal action against them under the provisions of Section 138 of the Negotiable Instruments Act.

14. In the light of this discussion, I find that the cognizance taken and issue of summons to the accused-petitioners does not tantamount to abuse of process of law. Therefore, these petitions fail and are accordingly dismissed.