

(1999) 03 AP CK 0055
In the Andhra Pradesh High Court
Case No : Criminal P. No. 5436 of 1998

N. Chandrasekhar and others

APPELLANT

Vs

Allwyn, a Unit of Voltas Ltd. and another

RESPONDENT

Date of Decision : 31-03-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142

Citation : (1999) 3 ALD 44 : (1999) 1 ALD(Cri) 671 : (1999) 1 ALT(Cri) 357 :
(1999) 2 CivCC 349 : (1999) 97 CompCas 570 : (1999) CriLJ 4630 : (1999) 2
RCR(Criminal) 744

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Mr. Vedula Venkataramana, for the Appellant; Mr. Ramesh
Ranganathan and Public Prosecutor, for the Respondent

Judgement

1. Heard the learned Counsel for the parties. This is a petition filed u/s 482 Cr.PC seeking quashing of proceedings initiated against the petitioners alongwith some others u/s 138 and 141 of Negotiable Instruments Act. The only ground taken in this petition for quashing of the proceedings is that the accused are not partners of the accused No. 1 firm which is a partnership concern and which had issued a cheque in favour of the complainant which got bounced. It is not disputed by the petitioners in this petition that they were partners of the firm but they have only stated that they are not continuing as partners of the firm. It is also submitted that when a notice was issued by the complainant in terms of Section 138 of NI Act after bouncing of the cheque the petitioners had replied saying therein that they were not continuing as partners of the said firm. The petitioners have further placed on record the Income tax returns from 1992 to 1998 showing thereby that they were not partners of the firm. The allegations levelled in the complaint are that the complainant company appointed the 1st accused firm represented by accused No.2 to 9 as its Managing partner and partners respectively as one of the dealers at Hyderabad for selling Refrigerators which

were supplied to them on credit basis. There were some dues and a cheque was issued by the 1st accused firm being cheque No. 172575 dated 28-8-1998 for an amount of Rs.17,92,691.51 ps. which was on presentation with the Bank returned with endorsement "Exceeds Arrangement". The complainant further states in the complaint that all the accused herein as Managing partner and partners of the firm are liable and responsible in the day to day affairs and conduct of the business. It further states that the said offence was committed with the knowledge of all the accused and intentionally they have not exercised any diligence to prevent the commission of the offence and all the accused having knowledge of bouncing of said cheque have not paid any amount towards the amount covered under said cheque and are guilty of commission of the said offence.

2. In the light of these assertions made in the complaint it has to be examined whether a prima facie case is disclosed against the petitioners, or not. The learned Counsel for the petitioners relied on certain judgments. One of the judgments is Mohan Kumar Mukherjee v. Ledo Tea Company Ltd. 1998 (2) ALD (Cri.) 733 (Cal.). This is a judgment by Calcutta High Court. The complainant in this case had stated in his complaint that the accused persons are the Directors of M/s. Tirrihannah Co. Ltd., having its registered office at Mcloid House 3 Netaji Subhas Road, Calcutta-I. This was the only allegation against one of the Directors of the Company and the Calcutta High Court on the basis of this assertion in the complaint stated that, prima facie case against such Director was not disclosed in the complaint. The Calcutta High Court relied on various judgment including the judgment of Supreme Court reported in Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, .

3. The facts of the present case are materially different from the facts of the case which was before the Calcutta High Court. In that case it was only stated in the complaint that the accused was the Director of the Company, but in the present case it has been stated as noted herein above that, all accused were engaged in the day to day business of the accused No. 1 and were also in know of the fact that the cheque had been issued. Whether such an assertion or accusation is correct or incorrect will have to be decided during the trial as it is a question of fact. Similarly, u/s 482 Cr.PC this Court cannot transform itself into a Court of trial by examining the documents such as returns of Income tax produced before it. Those documents can be tested during the trial.

4. Another judgment of this High Court reported in G.L. Modi v. Xedd Finance and Investments Pvt. Ltd. 1998 (2) ALD (Cri) 99 (AP), has also been cited by the learned Counsel for the petitioners. This case was similar to the case decided by the Calcutta High Court. There was no allegation in the complaint that Directors were incharge and responsible for the conduct of business of the company at the time of issuance of cheque, therefore this Court allowed the petition u/s 482 Cr.PC.

5. On the other hand the learned Counsel for respondent had cited a judgment of

this High Court being *L. Raja Krishna Reddy v. Satwik Drugs Ltd.*, 1998 (2) ALT (Cri) 267 (AP). In this case also the petition was dismissed on the ground that questions of fact were raised which had to be decided during the trial.

6. Another judgment which has been cited by the respondent is the judgment in *Sint. Davinder Kaur v. Small Scale Industries Devp. Rank of India* 1998 (2) ALT (Cri.) 169 (AP). In this case also a plea was taken by the petitioners that they were sleeping directors and have resigned from the Company as such they ceased to be the Directors of the Company by the date of issuance of cheques on behalf of the company. The Court found that this was a question of fact which has to be decided during the trial.

7. This Court had also occasion to decide a similar matter in *Crl. P. No.5869 of 1998* on 5th February, 1999. In that case also it was argued that it was not sufficient to be a Director of a Company for having vicarious liability u/s 138 of the NI Act but such Director should be involved in day to day business before any liability can be fixed on him. The matter was dismissed as the Court found that complaint contains the allegations which prima facie constitute an offence u/s 138 read with Section 141 of NI Act.

8. Before appreciating these judgments it will be profitable to refer to Section 141 of the Negotiable Instruments Act. It lays down :

"141. 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.

(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."

From the perusal of this Section, it is clear that when an offence is committed by a company u/s 138 every person who was at the time of committing offence in charge and was responsible for the company for the conduct of the business of the Company shall be deemed to be guilty of offence. So, if an offence is committed u/s 138 of NI Act by a Company all the persons who are in the charge and are responsible for the conduct of business of the Company at the time of

committing of such offence are vicariously liable and are guilty u/s 138. Now, whether a person was in charge and was responsible for conduct of the business of the Company at the relevant point of time is essentially a question of fact. The position would however be different if no such allegation is made against an accused in the complaint itself. It would not be sufficient to say that such and such person was Director of a Company, but, if it is stated in the complaint and if it is alleged against a particular accused that he was in charge of the company and was responsible for the conduct of business of the company, it would be sufficient for taking cognizance against such an accused. Whether he had ceased to be such a person or whether he was never associated with the company in such a capacity would be questions of fact which would have to be decided during the trial. The tests laid down by the Supreme Court for exercising power u/s 482 Cr.PC in State of Haryana and others Vs. Ch. Bhajan Lal and others, , are still holding the field. One of the tests whether the complaint should be quashed at threshold or not was, "Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused." While applying this test to the complaint on hand, I find that it discloses commission of offence by the petitioners.

9. Therefore, for these reasons, I do not find any merit in this petition which is accordingly dismissed.