
(1998) 12 BOM CK 0057

In the Bombay High Court

Case No : Criminal Writ Petition No's. 763, 764, 765, 766 and 794

P. Rajarathinam and another

APPELLANT

Vs

The State of Maharashtra and another

RESPONDENT

Date of Decision : 24-12-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 420, 482

Negotiable Instruments Act, 1881 (NI) — Section 138, 139, 140, 141, 142

Citation : (1999) 2 ALD(Cri) 407 : (1999) 2 ALLMR 261 : (1999) 5 BomCR 308 : (1999) 2 CivCC 166 : (1999) 1 MhLj 815 : (1999) 3 RCR(Criminal) 514

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

Bench : Single Bench

Advocate : G.S. Hegde, instructed by M/s. Hegde Associates, Ms. Usha Kejariwal and R.Y. Mirza, apps, for the Appellant; Adik Shirodkar and Saikumar Pathrudu, D.P. Adsule, M.P. Galeria, Ms. Usha Kejariwal and R.Y. Mirza, A.P.Ps., for the Respondent

Judgement

D. G. Deshpande, J.—Heard Mr. G.S. Hegde for the petitioners in all the petitions and Mr. Adik Shirodkar for the original complainant respondents and A.P.P. for the State.

2. Question involved in Petition No. 763/98, 764/98, 794/98 are identical and that is if the notice u/s 138 of the Negotiable Instruments Act, (in short N.I. Act) is not given to the company and if for that reason company cannot be made accused in complaint case then whether the Directors of that company can be made liable and can be made accused. Question involved in Petition No. 765/98 and 766/98 is whether the Director who has resigned from his post as Director can be proceeded against under sections 138 or 141 of the N.I. Act. These questions were formulated on the basis of the submissions made by Mr. Hegde for the petitioners.

3. Out of these five petitions, Writ Petition No. 794/98 is filed by M/s. PRA Investments Ltd. and other petitions have been filed by P. Rajarathinam. So far

as Petition No. 794/98 is concerned, it was contended by Mr. Hegde that the petitioner M/s. PRA Investments Ltd., was made an accused in 138 proceedings by the respondents in that petition and since no notice u/s 138 of the N.I. Act was issued to the petitioner company, the criminal complaint u/s 141 or 138 of the N.I. Act, was not maintainable. Mr. Hegde contended that Justice Parkar in similar petition i.e. Criminal Writ Petition No. 1006 of 1996, M/s. PRA Investments Ltd. v. The State of Maharashtra & others, had upheld this objection and quashed the proceedings as per para 5 of this petition. Mr. Shirodkar could not contradict Mr. Hegde in this regard, nor he could show that any notice u/s 138 or 141 of N.I. Act was issued by the respondents to the petitioner company M/s. PRA Investments Ltd. and since its mandatory requirement of law that before filing the complaint case, the payee or holder of the cheque gives notice in writing to the drawer of the cheque. Admittedly, M/s. PRA Investments Ltd. was the drawer of the cheque as per the complaint and since no notice was given, order of issue of process in that case is required to be quashed. So far as, the other petitions i.e. Petition No. 763/98 and 764/98 are concerned, it was contended by Mr. Hegde that if the company, of which P. Rajarathinam was the Director could not be made an accused or could not be prosecuted because of want of notice u/s 138, then the present petitioner could not also be prosecuted. He relied upon the judgment passed by Justice Barde reported in 1997(3) Bom.C.R. 120: 1998 Bom.C.R.584 : 1997(3) M.L.J. 335 A. Chinnaswami v. M/s. Bilakchand Gyanchand Company. In this regard, it was contended by Mr. Shirodkar that this judgment of Justice Barde will be of no application in the present case. Firstly, because Justice Barde relied upon the two judgments of the Supreme Court based on Essential Commodities Act reported in Sheoratan Agarwal and Another Vs. State of Madhya Pradesh, , and State of Madras Vs. C.V. Parekh and Another, ; whereas Chapter XVII including section 138 to 142 was added to N.I. Act in 1988. Secondly, according to Mr. Shirodkar section 141 dealing with company offences provided if the person committing an offence u/s 138 was a company, every person was in charge of and 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 therefore since this section 141 makes the company as well as all those persons in charge liable to be proceeded against and punished accordingly. Accused P. Rajarathinam could not get advantage of quashing the proceedings against the company for want of notice, particularly when notices u/s 138 were given to the present petitioner in all the complaints.

4. The Petition No. 794/98 is required to be separated from other petitions for considering the submissions made by both the parties, particularly with reference to the judgment in A. Chinnaswami's case given by Justice Barde and secondly so far as the respective contentions of the complainant and accused are concerned, this is a case where the complaint and the verification statements are required to be seen as against the defence raised by the accused. The copies of complaints in all these petitions (excluding Petition No. 794/98) are almost

identical e.g. in Writ Petition No. 763/98 copy of the complaint in C.C. 121/S/96 is filed and in paras 3 and 4, the complainants have stated as follows :

"3. The complainant says that on 31st October, 1994, Accused No. 1 had signed a memorandum of understanding with Shri Chandrakant B. Garware. Therefore, a supplemental memorandum of undertaking dated 8th February, 1995, was then made and signed by accused No. 1 and Shri Chandrakant B. Garware.

According to the Attachment 1 to the above mentioned supplemental memorandum of understanding dated 8th February, 1995, Accused No. 1 agreed to pay to Shri Chandrakant B. Garware a total sum of Rs. 4.94 crores. Further, Accused No. 1's representative C. Muthuswamy, by his letter dated 11th April, 1995, sought time to give the cheques for the said amount in 4 installments. Further, accused No. 2, has issued four post dated cheques and duly signed the same as authorised signatory of Accused No. 3.

4. The Complainant says that on 7th July, 1995, one of the post dated cheques issued by Accused No. 2 for and on behalf of Accused No. 1 was deposited in Shri Chandrakant B. Garware's Bank, namely M/s. Indian Overseas Bank, Worli Branch, Bombay. The particulars of the abovesaid cheque were as under.

Cheque No. 978034 dated 25th June, 1995 drawn on the State Bank of Travancore, Bombay Main branch, for sum of Rupees One Crore drawn in favour of Shri Chandrakant B. Garware, and his Bankers by their "cheque return advice" dated 11th July, 1995 informed complainant's husband that the said cheque was dishonoured on the ground "Payment stopped by the drawer".

5. From the aforesaid allegations which are identical to the averments made in the other complaints involved in other writ petition (excluding Writ Petition No. 794/98) it is clear that the transaction giving rise to the issuance of the cheque was the transaction between the present petitioner and Mrs. Anita Chandrakant Garware and it was also on account of MOU and supplemental MOU arrived at between them, wherein the present petitioner P. Rajarathinam agreed to pay to late Chandrakant Garware sum of Rs. 4.94 crores and representative of the present petitioner, one C. Muthuswamy sought time to give cheques for the said amount in four installments and consequently, the cheques were issued under the authority of the present petitioner. It is pertinent to note that the complainant nowhere states that M/s. PRA Investments Ltd. was the drawer of the cheque but it is asserted by the complainant that the cheques were issued pursuant to the MOU or supplementary MOU were signed as authorised signatory of M/s. PRA Investments Ltd. In the case before Justice Barde, the drawer of the cheque was undisputedly M/s. Shakti Spinners Ltd. and the signatory of the cheque was Managing Director. This in my opinion is the distinguishing factor between A. Chinnaswami's case decided by Justice Barde and this present case and this distinguishing factor, makes all the difference and therefore the judgment of Justice Barde is of no help to the petitioner. Petitioner therefore cannot be allowed to contend that because proceedings cannot lie against M/s

PRA Investments Ltd. for want of notice u/s 138, the proceedings cannot lie against the present petitioner. This contention is therefore rejected in the Petitions Nos. 763/98 and 764/98.

6. So far as the remaining two petitions i.e. Petition No. 765/98 and 766 are concerned, it was contended by Mr. Hegde that petitioner has resigned and hence is not liable to be prosecuted. In Petition No. 765/98 the cheque was a post-dated cheque for Rs. 1 crore and it was dated 26-5-1996 or 1995 presented on 26-7-1995 by deceased Chandrakant Garware in his Indian Overseas Bank, Worli Branch. In 766/98 the cheques was dated 26-5-1996 for Rs. 1 crore fourty four lakhs by deceased Chandrakant Garware in his Indian Overseas Bank, Worli Branch and it was presented on 6-11-1995. Both these cheque according to the complainant were issued pursuant to the MOU and the supplemental MOU dated 31-10-1994 and 8-2-1995 and cheques were issued some time in April 1995 as per the allegations in the complaint and therefore crucial question is whether the petitioner has resigned as a Director of M/s. PRA Investments Ltd. in April, 1995. Mr. Hegde drew my attention in that regard to Form No. 32 filed at Exhibit "A" at record page 7 of petition No. 765/98, wherein the petitioner P. Rajarathinam has resigned as Director on and from 3-1-1995.

7. When this Exhibit "A" Form No. 32 showing date of resignation of the petitioner as 3-1-1995 was brought to the notice of the Court by Mr. Hegde, it was contended by Mr. Shirodkar that serious question regarding the genuine nature of the resignation and bonafides of the resignation was involved in this matter, which could only be resolved at the time of the trial because according to Mr. Shirodkar if the present petitioner P. Rajarathinam did sign MOU on 31-10-1994 followed by supplemental MOU dated 8-2-1995 then the defence now raised that he resigned on 3-1-1995 as per Form No. 32 appear to be totally false and he further contended that this also revealed a clear cut case of cheating u/s 420 because if the petitioner had resigned on 3-1-1995 from the Directorship of M/s. PRA Investments Ltd. then he had no authority or power to sign supplemental MOU on 8-2-1995.

8. It is true that as per Form No. 32 filed with both petitions i.e. 765/98 and 766/98 the present petitioner P. Rajarathinam appears to have resigned as Director on 3-1-1995. However, considering the facts narrated in the complaint and considering the signing of MOU by petitioner on 31-10-1994 and signing of supplemental MOU on 8-2-1995 the contention of resignation on 3-1-1995 cannot be accepted and accused is required to prove his defence in the trial Court. The nature of the MOU dated 31-10-1994, the legal obligation of the parties, responsibilities and undertakings given by the present petitioner so also the nature and purpose of supplemental MOU and the representations made by the present petitioner and the obligations taken by him are required to be tested during the trial with reference to the so-called resignation of the petitioner on 3-1-1995 and therefore as rightly argued by Mr. Shirodkar merely because Form No. 32 is produced by the petitioner, he cannot be allowed to claim discharge

from proceedings. Mr. Shirodkar relied upon the unreported judgment of Supreme Court in Criminal Appeal No. 925 of 1997 with 926 of 1997 P.R. Rajarathinam v. State of Maharashtra & others, wherein present petitioner was also the appellant before the Supreme Court and the question involved was regarding the vicarious liability of the offences of the company being prosecuted under the Special Acts where the company is the offender and where section 141 of the N.I. Act was involved. The Supreme Court observed that the bare reading of the provisions of section 141 mandates that some facts must come on the record in order to figure as to who should answer the charge ultimately. Necessarily, pre-charge evidence assumes importance. The complainant will have to put his side of the case as given out in the complaint and the persons summoned would have to put on the record all what is material to extricate themselves out. In any case, the crucial time would be when framing charge whereat a decision in that respect would be required to be made by the Court. I find that these observations of the Supreme Court are very much relevant in the facts of the case wherein the petitioner as according to the complainant have even after entering into two MOUs and even after seeking time to issue cheque being now contending that he is not liable because of the resignation given by him. I do not find any support in this defence raised and hence the following order :

ORDER

9. Petition No. 794 of 1998 is allowed. Rule made absolute. Proceedings against the petitioner-Company in CC No. 122/S/96 are quashed.

10. All other petitions (Petition No. 763/98, 764/98, 765/98 and 766/98 are dismissed. Rule discharged in all the petitions. Stay, if any vacated. Parties to appear before the trial Court on 18-1-1999.

11. Rule discharged.