(2007) 08 MAD CK 0237

In the Madras High Court

Case No : Criminal O.P. No. 30326 of 2005 and Criminal M.P. No''s. 8657 and 8658 of 2005

P. Snehlatha APPELLANT

Vs

Victory Leathers RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2008) 1 BC 636

Hon'ble Judges : R. Regupathi, J

Bench : Single Bench

Advocate : M. Arvind Subramania, for the Appellant; N. Manokaran, for the Respondent

Judgement

R. Regupathi, J.—Petitioner herein is the first accused in C.C. No. 777 of 2006 on the file of Judicial Magistrate-I, Erode, for the offence punishable u/s 138 of the Negotiable Instruments Act (in short ''Act'')- Second accused is the husband of the petitioner/first accused.

2. At the foremost, learned Counsel for the petitioner submits that in the notice issued to the petitioner subsequent to dishonour of the cheque dated 15.12.2004, she has been wrongly described as the Proprietor of the firm Techno Associates, consequently, a reply has been sent, clarifying the fact that the petitioner is a sleeping (sic) partner and that only her husband viz., second accused, is the Managing Partner of the firm, however, in spite of such clarification by way of reply to the notice, it has been stated in para No. 2 of the complaint that the petitioner is the Managing Partner of the firm. It is stated that the petitioner being the wife of the 2nd accused, never actively participated in the business of the firm; that being so, only on imaginary basis and speculation, she has been stated as the Managing Partner of the firm by the complainant. By pointing out that the cheque issued bears the signature of the second accused over the rubber stamp with the description ''Authorised Signatory'' of Techno

Associates; he argues that withouteven impleading the firm as one of the accused in the case, simply acting on the figment that the petitioner is the Managing Partner of the firm, proceedings have been initiated for no reason but to harass her. Learned Counsel, ascribing the allegation in the complaint viz.-

2...Both are taking active part of day-to-day business affairs and all the personal involvement or Techno Associates. The 1st accused authorised the 2nd accused to operate Bank accounts also....

as bald one, would submit that no other specific allegation has been made in the complaint to attract the ingredients of Section 138 of the Act so as to proceed against the petitioner. Referring to Section 141 of the Act, he states that unless there are specific allegations regarding commission of the offence with the consent and connivance of a particular person available, mechanically, he/she cannot be added an accused. For claiming the petitioner as the Managing Partner of the firm and to show that in such capacity she authorised the second accused to operate the Bank account, no positive material has been furnished in the complaint; hence, the learned Counsel pleads that the entire proceedings as against the petitioner may be quashed. To substantiate the points agitated, he relies on a decision of the Supreme Court reported in Katta Sujatha v. Fertilizers and Chemical Travancore Ltd. 2003 (1) C.T.C. 127, wherein, it has been held as follows-

4...However, one thing is clear that the appellant was in no way involved in any of the transactions referred to in the complaint and it was not stated that she was in charge of the business and was responsible for the conduct of the business of the firm in terms of Section 141 of the Act nor was there any other allegations made against the appellant that she had connived with any other partner in the matter of issue of cheque.... This Court explained the meaning by observing that the term "person in charge" must mean that the person should be in overall control of the day-to-day business of the company or firm. The person should (sic may) be a party to the policy being followed by a company and yet not be in charge of the business of the company or may be in charge of but not in overall charge or may be in charge of only some part of the business.

5. In short the partner of a firm is liable to be convicted for an offence committed by the firm if he was in charge of and was responsible to the firm for the conduct of the business of the firm or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the partner concerned.

3. Per contra, learned Counsel for the complainant submits that they have received the cheque, wherein, the signature of the second accused was assigned and that the inquiry made by them revealed that the petitioner/first accused is the proprietor and the 2nd accused is the authorised signatory. According to him, in the complaint, even though the petitioner was mentioned as the Managing Partner in spite of the clarification made in the reply, inasmuch as in the course

of trial, the complainant may produce relevant materials to substantiate that the petitioner was functioning at the relevant time as the Managing Partner and the 2nd accused was authorised by her to operate the Bank account; at best, the point raised by the learned Counsel for the petitioner can be canvassed during the course of trial and on the basis of such points, there is no need to quash the complaint and the subsequent proceedings initiated thereupon. He further submitted that as per Section 141 of the Act, every person, who is incharge of and responsible to the affairs of the business of a firm must be held liable, therefore, opportunity must be given to the respondent-complainant to produce materials to that effect.

4. I have perused the materials available on record and considered the submission made by both the Counsel. Even in the notice as well as in the complaint, only on imaginary basis, the petitioner has been categorised as Proprietor and Managing Partner. Even at the time of inquiry of the petition, materials to substantiate such claim have not been produced. Therefore, it can be safely concluded that such allegation/description has been made merely on surmises and conjecture. It is basic principle that when a complaint is preferred before competent Court of law, the complainant must furnish all sufficient and relevant materials to substantiate a positive case against the individual in respect of whom he makes the claim/charge. Here, it is prima facie apparent that the petitioner has been impleaded as one of the accused in the case on conjectural basis. Though it is well known to the complainant that the second accused signed the cheque as an authorised signatory of the firm, the firm has not been impleaded as an accused. In such circumstances, this Court can safely proceed on the basis that without any substance and material the petitioner has been impleaded in the case. Even though the petitioner is a partner of the firm, there must be specific allegations and averments regarding the role played by her in such capacity. In the instant case except the bald allegation that the petitioner took active part in the day-to-day business affairs of the firm, no substantive material has been made available. In such circumstances, I hold that the inclusion of the petitioner in the private complaint is an abuse of process of Court. Consequently, the proceedings pending against the petitioner in C.C. No. 777 of 2005 on the file of Judicial Magistrate No. 1, Erode, are quashed. The learned Magistrate shall proceed with the remaining accused in accordance with law. Learned Counsel for the respondent submits that the complaint has been made in the year 2005 and seeks for a direction to expedite the trial as the proceedings u/s 138 of the Act would be conducted on summary trial basis. Since the present case is a long pending one the learned Magistrate is directed to expedite the trial and dispose of the case within a period of six months from today.

With the above observation, the petition is ordered. Connected miscellaneous petitions stand closed.

