(2023) 05 OHC CK 0128

In the Orissa High Court

Case No : CRLMC No. 3560 Of 2022

Prasanta Chandra Rath — APPELLANT

Vs

Pradip Kumar Patra — RESPONDENT

Date of Decision : 09-05-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Negotiable Instruments Act, 1881 — Section 138, 141, 142

Citation : (2023) 05 OHC CK 0128

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : D.P. Dhal, Durga Prasad Dhal, Prabir Kumar Ray, A.R. Sethy, S. Dev

Final Decision : Allowed

Judgement

Sashikanta Mishra, J

1. Heard the Amicus Curiae, Mr. D.P. Dhal, learned Senior Counsel with Mr. Durga Prasad Dhal, learned counsel for the petitioner and Mr. Prabir Kumar Ray, learned counsel for opposite party.

2. The petitioner in the present application filed under Section 482 Cr.P.C. seeks to challenge the order dated 19.07.2019 passed by learned S.D.J.M., Bhadrak in ICC Case No. 161 of 2019, whereby cognizance was taken of the offence under Section 138 of N.I. Act on a complaint filed by the present opposite party.

3. The only question that falls for consideration in the present application is, whether the complaint would be maintainable against the Director of a Company without arraigning the said Company as an accused. It is argued by learned Senior Counsel, this issue is no longer res integra in view of the decision of the Apex Court in the case of Anita Hada v. Godfather Travels & Tours Pvt. Ltd. reported in AIR 2012 SC 2795.

4. A perusal of the complaint petition enclosed as Annexure-1 to the CRLMC

petition reveals that only the petitioner has been arraigned as an accused person in his capacity as Director of Maa Durga Rice Processing & Exports Pvt. Ltd. It is alleged that the accused presented a cheque of Rs. 15 crores to the complainant towards purchase of paddy on behalf of the Company.

5. In the case of Anita Hada (supra), the three Judge Bench of the Apex Court held as follows:

“58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself.”

6. In view of the ratio laid down in the aforesaid case, it is evident that the complaint as laid is not maintainable in the eye of law.

7. It has been argued by Mr. Ray on behalf of the complainant that non-arraigning of the Company is a curable defect, which can be rectified by way of an amendment. Mr. Ray submits that the Company can be impleaded as an accused. He relied upon a decision of a learned Single Judge of Allahabad High Court in the case of Usher Agro Ltd. vs. State of U.P. and another, reported in (2018) ACD 818, wherein it was held that there is no provision either under the Code of Criminal Procedure or the N.I. Act prohibiting impleadment of a party to the complaint as an additional accused/opposite party.

8. Learned Senior Counsel, however, responded by citing a recent judgment of the Apex Court rendered in the case of Pawan Kumar Goel v. State of U.P., reported in 2022 SCC OnLine SC 1598. In the said case, after taking note of the judgment of the Apex Court in the case of Anita Hada (supra) and N. Harihara Krishnan v. J. Thomas, reported in (2018) 13 SCC 663, it was held as under:

29. In view of the above, arguments advanced by learned counsel for the appellant that an additional accused can be impleaded subsequent to the filing of the complaint merits no consideration, once the limitation prescribed for taking cognizance of the offence under Section 142 of NI Act has expired. More particularly, in view of the fact that neither any effort was made by the petitioner

at any stage of the proceedings to arraign the company as an accused nor any such circumstances or reason has been pointed out to enable the Court to exercise the power conferred by proviso to Section 142, to condone the delay for not making the complaint within the prescribed period of limitation.

9. From the foregoing narration, this Court finds the complaint not maintainable firstly, for the reason that the Company which purchased the paddy and on whose behalf the cheque in question was paid to the complainant has not been arraigned as an accused and secondly, there is no averment whatsoever to show as to how the petitioner being a Director of the Company was in-charge of and responsible for conduct of business of the Company at the relevant time so as to be criminally liable.

10. For the foregoing reasons, the CRLMC is allowed. The impugned order is hereby quashed.

11. Before parting with the case, this Court deems it proper to place on record its appreciation for the amicus curiae Mr. D.P. Dhal, learned Senior Counsel for assisting the Court.

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