
(2006) 01 CAL CK 0010
In the Calcutta High Court
Case No : C.R.A. No. 355 of 2001

Premier Medical Supply and Stores Proprietor Premier
Distributors (Calcutta) Pvt. Ltd.

APPELLANT

Vs

Pharma Traders and Others

RESPONDENT

Date of Decision : 04-01-2006

Acts Referred:

Companies Act, 1956 — Section 291, 401, 401(3)
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142

Citation : (2006) 1 CHN 668

Hon'ble Judges : Arun Kumar Bhattacharya, J

Bench : Single Bench

Advocate : Tirthankar Ghosh, for the Appellant; Prabal Mukherjee and Niloy Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Bhattacharya, J.—The hearing stems from an appeal preferred against the judgment and order dated 30.05.2001 passed by the Id. Metropolitan Magistrate, 5th Court, Calcutta in Case No. C.672/95 (T.R. No. 352/95) u/s 138 read with Section 141 of the Negotiable Instruments Act acquitting the accused persons.

2. Shortly put, the prosecution case is that the complainant filed a complaint being registered as Case No. C. 672/95 u/s 138 read with Section 141 of the Negotiable Instruments Act inter alia alleging that accused No. 1 is a partnership firm and, accused Nos. 2 to 4 being partners of the same are responsible for the day-to-day conduct of the business of the said firm. In discharge of their liabilities the accused persons issued an account payee cheque bearing No. 014123 dated 28.03.95 for Rs. 1,89, 363.54 p. drawn on U.B.I., Santoshpur Branch, Calcutta - 700 032, After presentation of the said cheque by the complainant to its banker Bank of India, Calcutta Main Branch, Calcutta - 700 001, it was returned on 25.04.95 with the remark "Insufficiency of funds".

Despite the notice dated 04.05.95 sent by the complainant, the accused persons failed to pay any amount. Hence, the accused persons were charged u/s 138 read with Section 141 of the Negotiable Instruments Act.

3. Three witnesses on behalf of the complainant while one witness on behalf of the defence were examined, and after considering the facts, circumstances and materials on record, the Id. Court below found the accused persons not guilty and acquitted them of the said charge.

4. Being aggrieved by, and dissatisfied with, the said order, the complainant has preferred the present appeal.

5. All that now requires to be considered is whether the Id. Court below was justified in passing the above order.

6. Mr. Ghosh, Id. counsel for the appellant, on referring the cases of Arun Kumar Dutta v. M. M. Upadhyay reported in 1997(11) CHN 508, M. B. Industries & Co. v. Gajanand Khandelwal reported in 1998 (II) CHN 252 and MM. T.C. Ltd. v. Medchl Chemicals & Pharma (P) Ltd. reported in 2002 SCC (Cri) 121, advanced argument contending that notice dated 04.05.95 (Ext. 4) was issued by Sri J.C. Gupta in the capacity of Principal Officer of the Company whereas the said Sri Gupta instituted the case being duly authorized (Ext. 3), and so the Id. Court below was erred in law in holding the said authorization as not maintainable, Mr. Mukherjee, Id. counsel for the respondents, on the other hand, in supporting the impugned judgment contended that since authorization was given by Sri Joygopal Banerjee, presumably in his individual capacity, and not in conformity with the provisions of Section 291 of the Companies Act and as such is bad in law, there is no material to interfere with the impugned judgment.

7. It is only in glaring cases of injustice resulting from some violation of fundamental principles of law by the Trial Court that the High Court is empowered to set aside the order of acquittal and direct a retrial of the acquitted accused. The power should be exercised sparingly and with great care and caution. The revisional power of the High Court is much restricted in its scope, as was held in the case of Bansi Lal and Others Vs. Laxman Singh, Similar observation finds place in the case of K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, and in subsequent decisions that the power of the High Court to set aside an order of acquittal at the instance of a private party is to be exercised only in exceptional cases of glaring defect of procedure or manifest error on a point of law resulting in flagrant miscarriage of justice. As Sub-section (3) of Section 401 forbids the conversion of a finding of acquittal into one of conviction it places a limitation on the power of the High Court to set aside an acquittal order which should be exercised only in exceptional cases. Such cases may be where (i) the Trial Court has no jurisdiction to try the case but has still acquitted the accused, or (ii) the Appellate Court has wrongly held the evidence admitted by the Trial Court to be inadmissible, or (iii) material evidence has been overlooked either by the Trial Court or Appellate Court or (iv) the acquittal is

based on a compounding of the offences, invalid under the law etc. These categories are merely illustrative and there may be other cases of similar nature when retrial or rehearing of appeal may be ordered.

8. The Id. Magistrate passed the order of acquittal mainly on three-fold grounds viz, (1) in the absence of any Board resolution authorizing the complainant to represent a private limited company incorporated under the Companies Act, the authorization (Ext. 3) is not maintainable, (2) the relationship between the payee company and Sri Joygopal Banerjee, Joint Director of the Premier Distributors (Calcutta) Pvt. Ltd. and between complainant and payee company have not been established, and (3) as authorization was issued much later than issue of demand notice, the said notice is bad.

9. u/s 142 of the Negotiable Instruments Act, a complaint u/s 138 can be made by the payee or the holder in due course of the cheque. Anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance, and no Court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. If any special statute prescribes offences and makes any special provision for taking cognizance for such offences under the statute, then the complainant requesting the Magistrate to take cognizance of the offences must satisfy the eligibility criterion prescribed by the statute, as was observed in the case of M.M.T.C, Ltd. (supra). Here, the only eligibility criteria prescribed by Section 142 being that the complaint must be by the payee or the holder in due course has been satisfied as the complaint is in the name and on behalf of the appellant company. When the complainant is a body corporate, it is the de jure complainant, and it must necessarily associate a human being as de facto complainant to represent the former in Court proceedings, and no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. There may be occasions when different persons can represent the company and it is, open to the de jure complainant company to seek permission of the Court for sending any other person to represent the company in the Court. Thus, even assuming that initially there was no authority, still the company can, at any stage, rectify that defect, At a subsequent stage, the company can send a person who is competent to represent the company, as was held in the above case of M.M. T.C. Ltd. In the case on hand, Sri J.C. Gupta, Chief Accountant of the company was authorized by the payee company signed by Sri Joygopal Banerjee, Director/proprietor of the company to represent the payee company (Ext. 3). Mere non-production of the Board resolution or other document will not give rise to any adverse presumption that Sri Gupta was not duly authorized to represent the company. Any employee of the company can represent the company in the Court proceedings. By Ext. 3 itself the relationship between Sri Banerjee and the payee company and between Sri Gupta and the payee company is well-established. So far the demand notice (Ext. 4) is concerned, it, as Section 142 provides, is to be issued before initiation of the proceeding,

whereas authority, as discussed earlier, may be given at any stage. So, the view taken by the Id. Court below is not at all tenable, and the impugned judgment and order are not sustainable.

10. Accordingly, the appeal be allowed. The impugned judgment and order of acquittal be set aside.

11. Let the matter be remanded to the Id. Court below with a direction to dispose of the proceeding, bearing in mind the observation made above, and in accordance with the law after hearing arguments of both sides, as expeditiously as possible preferably within three months from the date of receipt of the record.

12. Let a copy of this judgment along with the LCR be sent down at once to the Id. Court below.