

(2010) 02 MAD CK 0018

In the Madras High Court

Case No : Criminal O.P. No. 894 and 1947 of 2005

P.S. Subramanian

APPELLANT

Vs

Mahalakshmi Chemicals

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 394(3), 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 1 Crimes 856 : (2010) 1 LW(Cri) 305

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : B. Natarajan, for the Appellant; S.N. Thangaraj, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

C.T. Selvam, J.—This petition has been moved to quash the proceedings in C.C. No. 2320 of 2002 on the file of the VIII Metropolitan

Magistrate, George Town, Chennai for an offence punishable u/s 138 of Negotiable Instruments Act. The accused therein is a company by name

M/s. Imapro Formulations (P) Ltd. The complaint was preferred before the lower Court on 09.05.2002. At the time of filing of the complaint, the

cause title did not reflect whom the accused company was to be represented by. Subsequently, by the order dated 10.10.2002 in M.P. No. 2930

of 2002 moved on behalf of the complainant, the trial Court permitted the complainant to include name of the Petitioner herein as the representative

of the accused company. This was challenged by the Petitioner, but such challenge was negated by the trial Court. The Petitioner had preferred

CrI.R.C. No. 70 of 2004 before the learned 1st Additional Sessions Court, which was pleased to dismiss the revision. Thereafter, the Petitioner

has moved the present petition to quash the proceedings.

2. The learned Counsel for the Petitioner submits that it was for the complainant to be vigilant at the time of filing the complaint and there was no

power in the lower Court to permit amendment of the complaint. On the day, the amendment was allowed i.e. on 10.10.2002, the complaint

would have been barred by limitation. Learned Counsel submitted that the order of the Revisional Court in Crl.R.C. No. 70 of 2004 dismissing the

same was passed following the decision of the Apex Court to the effect that no application for discharge or dropping the proceedings can be

maintained in a summons case and that the dismissal of the revision on the said ground would not attract application of Section 394(3) Code of

Criminal Procedure, which places on embargo in filing the second Revision. Learned Counsel submitted that in any event, the present petition is not

the one seeking relief in the nature of revision, but it was one seeking the exercise the inherent power u/s 482 Code of Criminal Procedure towards

quashing the proceedings. He also submits that no statutory notice u/s 138 of Negotiable Instruments Act has been issued on him.

3. The learned Amicus Curiae appointed by this Court would submit that the present petition was not maintainable, since the accused in the case, a

body corporate was permitted to be represented by the Petitioner herein and the case was not one where the Petitioner in his personal capacity

was arrayed as accused. He placed reliance on the decision of the Hon'ble Apex Court in M.M.T.C. Ltd and Anr. v. Medchl Chemicals and

Pharma (P) Ltd and Anr. 2002 SCC (Cri) 121 :2002 1 LW Cri 356 wherein the Apex Court had observed as follows:

12. In the case of Associated Cement Co. Ltd. v. Keshvanand it has been held by this Court that the complainant has to be a corporeal person

who is capable of making a physical appearance in the court. It has been held that if a complaint is made in the name of an incorporeal person (like

a company or corporation) it is necessary that a natural person represents such juristic person in the court. It is held that the court looks upon the

natural person to be the complainant for all practical purposes. It is held that 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. It has further

been held that 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. It has been held that there may be occasions when different persons can represent the company. It has been held that 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 presuming, 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. The complaints could thus not have been quashed on this ground.

Learned Counsel submitted that even in the event of conviction, the 1st accused / company only would be liable to pay a fine and when there is no dispute that the complaint was filed within time on 09.05.2002, then it was only the necessity of the accused company being represented by a human agency, which had been fulfilled by the order of the trial Court passed on 10.10.2002 and the same could not be faulted.

4. I have considered the rival submissions.

5. Learned Counsel for the Respondent is right in his submission that the order of the trial Court on 10.10.2002 only enables representation of the accused company by a human agency. The original complaint has been filed within time. The Petitioner herein has not been arrayed as accused in his individual capacity and the question of issuance of notice u/s 138 of Negotiable Instruments Act to the Petitioner herein does not arise, since it is not the Petitioner who is sought to be made an accused. It is not in dispute that such notice stood issued to the 1st accused / company. It is apparent that since the Petitioner is before the trial Court only in a representative capacity, he will not incur any personal liability, if the case does end in conviction. The rationale of the decision of the Apex Court in *M.M.T.C. Ltd and Anr. v. Medchl Chemicals and Pharma (P) Ltd and Anr.*

2002 SCC (Cri) 121 also would apply where the body corporate is an accused.

6. Under such circumstances, this Court finds no merit in the petition to quash and accordingly, the petition shall stand dismissed. Consequently, connected miscellaneous petition is closed.

7. The District Legal Aid Services Authority, Chennai is hereby directed to pay a

remuneration of Rs. 3,500/- to the Amicus Curiae Mr. S.N.

Thangaraj, who rendered his assistance to this Court for disposal of the present case.