
(2013) 07 SHI CK 0022

In the High Court Of Himachal Pradesh

Case No : Criminal MMO No. 75 of 2013 Alongwith Cr. MMO No. 76 of 2013 and Cr. MMO No. 77 of 2013

Raj Pal Kapil

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

Citation : (2013) 3 ShimLC 1248

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Advocate : B.S. Chauhan, for the Appellant; V.K. Verma, Additional Advocate General with Mr. Ramesh Thakur, Assistant Advocate General for the Respondent No. 1 and Mr. Ashwani Kaundal, Advocate for the Respondent No. 2, for the Respondent

Judgement

Surinder Singh, J.—A common question of law is involved in the present petitions, hence taken up together, invoking the jurisdiction of this Court u/s 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India, praying to quash and set-aside the order dated 4.9.2013 summoning the present petitioner as an accused for the offence punishable u/s 138 of the Negotiable of Instruments Act, in short "the Act" and subsequent orders and ultimately dismissing the complaint for want of impleading the Company as an accused. The petitioner herein is alleged to be working for "Strain Brain" INNS of Court Head Office, 539, PKT Sector 17, Dwarka, New Delhi-110075. It is alleged that on the persuasion of associates concerned of the accused, namely, Kewal Krishan, Om Parkash and Dev Raj as well as on the assurance of the petitioner to provide job in abroad, he received Rs. 3,00,000/- from the private respondents aforesaid on or before October/November, 2011 and also got the Pass-port of the private respondents on "Tatkal" basis. However, when nothing was done, the accused was asked for the refund of the money, as advance taken from each of the private respondents. Thus in order to discharge the legal debt, the petitioner issued three cheques of the said amount to each of them from his account

maintained by his banker "Kotak Mahindra", Sector-5, Dwarka, New Delhi under his signatures, which bounced back because "insufficient funds", as such, on having received the said communication, statutory notice was issued calling upon the petitioner to make the payment of the cheque amount within a specified period to which he failed and the complaints were filed against him before the Judicial Magistrate Ist Class, Barsar.

2. After recording the preliminary evidence, the accused-petitioner was summoned as an accused, which is sought to be set-aside and the complaints dismissed for want of impleading the Company as an accused.

3. In reply of the present private respondents submitted that the petitioner had intentionally issued the cheques in the name of Company, namely, Swiftron Courier and Cargo Ltd. with which the petitioner has nothing to do. The FIR was also registered by the police on the direction of the Magistrate u/s 156(3) of the Code of Criminal Procedure, for the offences punishable under Sections 419, 420 and 511 of the Indian Penal Code (Annexure R-2).

4. A perusal of the cheque which is exhibited on all the complaints as Ext. CW1/B for Rs. 3,00,000/- in each of the petitions shows that the petitioner had signed it as an authorized signatory for "M/s. Swiftron Courier and Cargo Ltd." and that concern has an account in the Bank aforesaid, but the cheque bounced backed for want of "insufficient funds".

5. Precisely the question is whether in the absence of the Company, the petitioner can be prosecuted as a signatory of the cheque, the answer is "NO". In absence of the Company, the complaint is not maintainable.

6. Section 141 of the Act reads as under:

Offence by companies.--(1) If the person committing an offence u/s 138 is a company, every person who, at the time the offence was committed, was in charge of, and was 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 shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the

offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purposes of this Section,-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.]

7. Section aforesaid uses the term "person" and refers it to a company. The company is a juristic person. The concept of corporate criminal liability is attracted to a corporation and company and it is so luminescent from the language employed under this Section. This enactment is one where the company itself and certain categories of officers in certain circumstances are deemed to be guilty of the offence.

8. The company can have criminal liability fastened on it, and if a group of persons that guide the business of the companies have the criminal intent, that would be imputed to the body corporate. On a reference to the larger Bench in *Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd.*, , three judges of the Supreme Court examined this proposition and observed that Section 141 of the Act clearly stipulates that when a person which is a company commits an offence, then certain categories of persons in charge as well as the company would be deemed to be liable for the offences u/s 138. Thus, the statutory intendment is absolutely plain. The provision makes the functionaries and the companies to be liable and that is by deeming fiction. A deeming fiction has its own signification.

9. It was further observed that it is the bounden duty of the Court to ascertain for what purpose the legal fiction has been created. It is also the duty of the Court to imagine the fiction with all real consequences and instances unless prohibited from doing so. That apart, the use of the term "deemed" (used in the present case in Section 141) has to be read in its context and further, the fullest logical purpose and import are to be understood. It is because in modern legislation, the term "deemed" has been used for manifold purposes. The object of the legislature has to be kept in mind.

10. The apex Court examined the provisions of Section 141 of the Act above vis-?-vis Section 85 of the Information Technology Act, 2000 and relevant provisions of the Essential Commodities Act as a logical sequitur, precisely holding that the prosecution of the Director or the authorized signatory of the cheque without arraigning of the company is not maintainable, in the absence of any legal bar. Now, in the present case, no legal bar has been impleaded to array the company as an accused. Admittedly, the company i.e. M/s. Swiftron Courier

and Cargo Ltd. has not been made an accused. As such, the complaint is not maintainable against the petitioner without its impleadment. Hence, the impugned order of summoning the petitioner being signatory of the cheque is quashed and set aside. Consequently, the complaint stands dismissed so also the pending applications, if any.