(2000) 07 MAD CK 0017

In the Madras High Court

Case No : Criminal O.P. No. 7191 of 2000 and C.M.P. No''s. 2388 and 2389 of 2000

Ramaganesan (a) Ramesh Venkatesan, Ambattur, Chennai - 58, Petitioner/Accused No. 2 — APPELLANT

Vs

M/s. Jannath Steel Scrap Traders, Mannurpet Chennai - 58 — RESPONDENT

Date of Decision : 20-07-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2000) 2 LW(Cri) 945

Hon'ble Judges : B. Akbar Basha Khadiri, J

Bench : Single Bench

Advocate : J. Jayashankar, for the Appellant; V. Narayanasamy for Mr. R. Rajasekaran Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Akbar Basha Khadiri, J.—The first accused in C.C.No.7191 of 2000 before the learned District Munsif-cum-Judicial Magistrate,

Alandur, Chennai has come forward with the instant quash proceedings.

2. This Criminal Original Petition has arisen in this way:

The respondent herein had preferred a complaint before the learned Judicial Magistrate u/s 138 of the Negotiable Instruments Act. alleging that the

petitioner herein issued three cheques towards payment of supply of scrap materials drawn on Bank of India, Ambattur Branch, Chennai. The total

value of the cheques being Rs. 18 lakhs. All the three cheques were returned by the bank with an endorsement as ''exceeds arrangement''".

Therefore, after following the procedures laid down under Sections 141 and 138 of the Negotiable Instruments Act, the respondent herein/complainant preferred a complaint before the learned Judicial Magistrate against the petitioner herein, who is the Executive Director of M/s.

Sivananda Steels Ltd., Ambattur, Chennai-58 and M/s. Sivananda Steels Ltd. Coimbatore.

3. Now, according to the petitioner, nowhere in the complaint, the complainant had mentioned that the petitioner is incharge of the affairs of the

company or that in control of the affairs of the company, for him to be prosecuted.

4. The learned Counsel for the respondent contended that the cheques were issued by the petitioner herein, the petitioner is the Managing Director,

and therefore, the criminal liability is attracted to him.

5. Heard both the sides. Section 141 of the Negotiable Instruments Act recites as under:-

141. Offences 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.

(2)Notwithstanding anything contained in subsection (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 office 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 purpose of this section

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

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

6. In the recent decision reported in Anil Hada Vs. Indian Acrylic Limited, the Apex Court has indicated the category of persons who can be

brought within the purview of penal liability. The Apex Court has observed as under in paragraph No. 10:

10. Three categories of persons can be discerned from the said provision who can be brought within the purview of the penal liability through the

legal fiction envisaged in the section. They are : (1) The company which committed the offence, (2) Everyone who was in-charge of and was

responsible for the business of the company, (3) Any other person who is a director or a manager or a secretary or officer of the company, with

whose connivance or due to whose neglect the company has committed the offence. It has also been held as under in Paragraph 12:

......The effect of reading S. 141 is that when the company is the drawer of the cheques such company is the principal offender under S. 138 of the

Act and the remaining persons are made offenders by virtue of the legal fiction created by the Legislature as per the section. Hence the actual

offence should have been committed by the company, and then alone the other two categories of persons can also become liable for the offence.

What follows is that in case of issuance of cheque on behalf of the company, the company is primarily liable and the person who issued the cheque

is also liable.

7. In the instant case, the petitioner herein had issued the cheque as the Executive Director. Though the learned Counsel for the petitioner says that

there are two Managing Directors, who are looking after the affairs of the company, the petitioner as the drawer of the cheque is also liable. This

has been reiterated by the Supreme Court in the decision reported in Bilakchand Gyanchand Co., vs. A. Chinnaswami (2000 (I) CTC 302),. In

that case, a complaint was filed against the Managing Director, who has issued the cheque and the Apex Court held that the complaint against the

Managing Director cannot be quashed u/s 482 of the Code of Criminal Procedure, because the person happened to be the Managing Director and

the cheque in question which was dishonoured was signed by him.

8. I do not find any merit in this petition. This Criminal Original Petition is dismissed. Consequently, Crl.M.P.Nos.2388 and 2389 of 2000 are also

dismissed.

