
(2014) 09 CAL CK 0049
In the Calcutta High Court
Case No : C.R.R. No. 946 of 2012

Ramsarup Industries Ltd. and Others	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 01-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319 — Negotiable Instruments Act, 1881 - Section 138, 141, 145(1)

Citation : (2015) 2 JCC 116

Hon'ble Judges : Joymalya Bagchi, J.

Bench : Single Bench

Advocate : P. Bhattacharjee and S. Majumder, Advocate, for the Appellant

Judgement

Joymalya Bagchi, J.?Proceeding being case No. C/36728/2010 pending before the learned Chief Metropolitan Magistrate, Calcutta, under section 138/141 of the Negotiable Instrument Act has been assailed at the behest of the petitioners. Mr. Bhattacharjee, learned counsel appearing on behalf of the petitioners submitted that the petitioner No. 1 is the accused company whereas the petitioner No. 2 and 3 have been roped in on the score of vicarious liability under section 141 of the N.I. Act. He however admitted that the petitioner No. 2 is the signatory of the cheque. He submitted that averment against the petitioner No. 3 was insufficient to implicate him in the instant case by invoking section 141 of the N.I. Act.

2. Mr. Mitra, learned counsel appearing on behalf of the opposite party No. 2/ com-plainant submitted that the requisite averments have been made in the petition of complaint as well as the evidence on affidavit of the complainant filed under section 145(1) of the N.I. Act. He accordingly prayed for dismissal of the revisional petition.

3. I find that the petitioner No. 2 is the Director of the company and also the signatory of the dishonoured cheque. Accordingly prosecution of the petitioner No. 2 under section 141 of the N.I. Act cannot be faulted in the light of the

decision of the Apex Court in the case of S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, .

4. With regard to the petitioner No. 3 it has been averred in paragraph 3 of the petitioner of complaint is as follows :

"That the accused persons have failed to pay and/or make payment of the said cheque amount in question to the complainant within the stipulated period through the accused No. 1 is the company and the accused No. 2 being the Managing Director and accused No. 3 being the Director looking after and conducting the company's day to day affairs at the material point of time and as such they have committed offence punishable under section 138/141 of the negotiable Instruments Act. 1881 (as amended)."

(emphasis supplied)

5. Mr. Bhattacharjee, learned counsel appearing for the petitioners argued that such averment is an inferential one made on the presumption that the petitioner No. 3 being the Director of the company was looking after day to day affairs and was in charge of the affairs of the said company. He relied on Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, .

6. I am in agreement with such submissions of Mr. Bhattacharjee. In the case of Municipal Corporation of Delhi (supra), the Apex Court held as follows :

"12. Before going to the complaint, we might state that it is common ground that the complaint clearly contains the allegations regarding the visit of the Inspector to the shop of respondent 6 (Madan Lal) and that the sample taken by him, which was sent to the Public Analyst, was manufactured by M/s. Upper Ganges Sugar Mills, Daryaganj, Delhi having its registered office at Calcutta and that the public Analyst found the samples to be adulterated. There is no dispute regarding these facts. The only point on which the controversy centres is as to whether or not on the allegations, the Manager as also the other respondents 1 to 5 committed any offence. The main clause of the complaint which is the subject matter of the dispute is Clause 5 which may be extracted thus:

5. That accused 3 is the Manager, of accused 2 and accused 4 to 7 are the Directors of accused 2 and as such they were incharge of and responsible for the, conduct of business of accused 2 at the time of sampling.

13. According to this Cause, accused 3 (Ram Kishan) who is respondent 1 in this appeal and accused 4-7 who are respondents 2 to 4, were the Directors of the Company, respondent 5. So far as the Manager, respondent 1, is concerned it was not and could not be reasonably argued that no case is made out against him because from the very nature of his duties, it is manifest that he must be in the knowledge about the affairs of the sale and manufacture of the disputed sample. It was, however, contended that there is no allegation whatsoever against the Directors, respondents 2 to 4.

14. Reliance has been placed on the words "as such" in order to argue that because (sic) the complaint does not attribute any criminal responsibility to accused 4 to 7 except that they were in charge of and responsible for the conduct of the business of the Company. It is true that there is no clear averment of the fact that the Directors were really in charge of the manufacture and responsible for the conduct of business but the words "as such" indicate that the complainant has merely presumed that the Directors of the Company must be guilty because they are holding a particular office. This argument found favour with the High Court which quashed the proceedings against the Directors as also against the Manager, respondent 1.

15. So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (accused 4 to 7) has been made out *ex facie* on the allegations made in the complaint and the proceedings against them were rightly quashed."

7. It is therefore clear that there cannot be an inference that the accused being a Director of the company is presumed to be in-charge and responsible for the affairs of the company. There is no independent allegation to that effect against petitioner No. 3 in the length and breath of the complaint and the evidence filed on behalf of the complainant. In view of ratio laid down in *Municipal Corporation of Delhi (supra)*, I am constrained to quash the proceeding against the petitioner No. 3.1, however, make it clear that in the event evidence is led against the petitioner No. 3 with regard to his active role in the transaction, the learned Magistrate shall be at liberty to consider arraying him as an accused under section 319 Cr.P.C.

8. The proceeding is accordingly quashed so far as the petitioner No. 3 is concerned. However, the proceeding is directed to continue in accordance with law against the petitioner No. 1 and 2 and be concluded preferably within three months from the date of communication of this order. The revisional application is allowed to the aforesaid extent.