

(2012) 03 GUJ CK 0061
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 2095 of 2008

R.K. Das Mehrotra and 1

APPELLANT

Vs

State of Gujarat and 1

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

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

Citation : (2012) 03 GUJ CK 0061

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : K.L. Pandya Addl. Public Prosecutor for Respondent(s) : 1 and Mr Ashish M. Dagli for Respondent(s) : 2, for the Respondent

Judgement

Honourable Mr. Justice M.R. Shah

1. Present Criminal Miscellaneous Application u/s 482 of the Code of Criminal Procedure has been preferred by the applicants herein-original accused to quash and set aside the complaint being Criminal Case No. 4102 of 2006, pending in the Court of learned Metropolitan Magistrate, Court No. 13, Ahmedabad, filed by respondent No. 2 herein-original complainant for the offences punishable under Sections 138 r/w 141 of the Negotiable Instruments Act. Today, when the present Criminal Miscellaneous Application is taken up for final hearing, after the matter was argued for some time, Shri D.M. Thakkar, learned advocate for the applicants seeks permission to withdraw the present application qua applicant No. 1 with a liberty to raise all the defences before the learned trial Court at the time of trial. In view of the above, present application is dismissed as withdrawn qua applicant No. 1 herein. Under the circumstance, this Court is required to consider the present application qua applicant No. 2 only.

2. Shri D.M. Thakkar, learned advocate for the applicant No. 2 has submitted that applicant No. 2 has not committed any offence as alleged for the offence u/s 138 of the Negotiable Instruments Act. It is submitted that as such there are no

specific averments and allegations in the complaint that applicant No. 2 herein was the Director of the original accused No. 1 company who has issued the cheque and that she was in day to day to affairs and management of the company. It is submitted that therefore, in absence of such specific averments and allegations in the complaint, the applicant No. 2 cannot be held vicariously liable u/s 141 of the Negotiable Instruments Act for the offence u/s 138 of the Negotiable Instruments Act alleged to have been committed by accused No. 1 company and for dishonour of the cheque issued and signed by the original accused No. 1. Therefore, relying upon the decisions of the Hon"ble Supreme Court in the case of National Small Industries Corporation Ltd vs. Harmeet Singh Paintal & Anr reported in (2010) 3SCC 330 as well as in the case of Central Bank of India vs. Asian Global Ltd reported in (2010) 11 SCC 203 as well as in the case of S.M. Pharmaceuticals vs. Neeta Bhalla reported in (2005) 8 SCC 89, it is requested to quash and set aside the impugned criminal proceedings qua applicant No. 2.

3. Shri Dagli, learned advocate for the original complainant is not in a position to satisfy the Court how in absence of any specific allegations and averments in the complaint that applicant no.2 was the Director of the Company who issued the cheque and in absence of any averments and allegations that she was in day to day affairs and management of the company, she can be held vicariously liable u/ s 141 of the Negotiable Instruments Act. Under the circumstance, it is requested to pass appropriate order considering the facts and circumstance of the case. However, has requested to make suitable observations that the complaint against rest of the accused to be proceeded further in accordance with law and on merits and without in any way being influenced by the present order.

4. Shri Dabhi, learned APP has requested to pass appropriate order considering the facts and circumstance of the case.

5. Heard the learned advocates for the respective parties at length and considered the averments and allegations in the impugned complaint which has been filed by the respondent No. 2 herein-original complainant for the offence u/ s 138 of the Negotiable Instruments Act for dishonour of the cheque issued by the Accosts Remedies Pvt Ltd and signed by applicant no.1-original accused No. 1 Shri R.K. Das Mehrotra. The applicant no.2 is arraigned as accused as Director of the aforesaid company. However, it is required to be noted that except in the cause title there are no averments and allegations in the complaint that applicant No. 2 was the Director of the company who has issued the cheque. Apart from that even there are no further allegations and averments in the complaint that the applicant No. 2 was in day to day affairs and management of the company who has issued the cheque. Under the circumstance, considering the decisions of the Hon"ble Supreme Court in the case of National Small Industries Corporation Ltd. (supra), Central Bank of India (supra) and S.M. Pharmaceuticals (supra) in absence of any such averment and allegation in the complaint, the applicant No. 2 cannot be vicariously liable u/s 141 of the Negotiable Instruments Act for

dishonour of the cheque issued by the company and signed by applicant No. 1 herein original accused No. 1. Under the circumstance, to continue the impugned criminal proceedings against applicant No. 2 would be abuse of process of law and Court and therefore, it is a fit case to exercise the powers u/s 482 of the Code of Criminal Procedure. In view of the above and for the reasons stated above, present applicant succeeds in part and the impugned complaint being Criminal Case No. 4102 of 2006, pending in the Court of learned Metropolitan Magistrate, Court No.13, Ahmedabad is hereby quashed and set aside so far as applicant No. 2 herein original accused No. 2 is concerned. However, the same shall be without prejudice to the rights and contentions of the original complainant against other accused who shall be tried by the concerned Magistrate in accordance with law and on merits and without in any way being influenced by the present order which would be qua applicant No. 2 only. Rule is made absolute to the aforesaid extent so far as applicant No. 2 is concerned and Rule is discharged so far as applicant No. 1 is concerned.