
(2009) 08 CHH CK 0052
In the Chhattisgarh High Court

Sanjay Kumar and Others	Vs	APPELLANT
State of Chhattisgarh and Others		RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

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

Citation : (2009) 3 CGLJ 424 : (2009) 4 MPHT 81

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

T.P. Sharma, J.—This petition is for quashment of the criminal proceeding registered in Criminal Case No. 2199/2007, before the Judicial Magistrate First Class, Sakti, whereby learned Judicial Magistrate First Class has taken cognizance of the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (for short "the Act") against the present petitioners.

2. Quashment of the criminal proceeding is prayed on the ground that the alleged cheque has not been issued by the present petitioners and has been issued by co-accused Kamlesh Kumar Patel, therefore, the present petitioners are not liable for any liability arose under the said cheque and continuation of criminal case would be abuse of the process of the Court.

3. Counsel for the parties are heard.

4. On 11-8-2009 Counsel for the petitioners has filed an application for deletion of the name of respondent No. 2 Krishnalal on account of his death and the name of respondent No. 2 Krishnalal has been deleted by Counsel for the petitioners.

5. Learned Counsel for the petitioners vehemently argued that the present petitioners are not members of any company or they are not the officers of the company responsible for any payment or they are not members of any association of individuals liable for payment on behalf of co-accused Kamlesh

Kumar Patel, therefore, continuation of criminal proceeding against the petitioners would amount to abuse of the process of the Court. Learned Court placed reliance in the matter of *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr.* 2005 SCC (Cri) 1975 , in which it has been held by the Apex Court that in case of complaint for the offence punishable u/s 138 of the Act against a company, the complainant is required to make necessary allegation that at the time of commission of the offence the accused was in charge of, and responsible for the conduct of business of the Company. Learned Counsel further placed reliance in the matter of *Sabitha Ramamurthy and Another Vs. R.B.S. Channabasavaradhya*, , in which it has been held by the Apex Court that the complainant is required to make averment in the complaint that all Directors of the Company were responsible for clearance of the liability. Learned Counsel also placed reliance in the matter of *Anil Hada Vs. Indian Acrylic Limited*, , in which the Apex Court has held that conviction u/s 138 of the Act against the Company finding that the offence was committed by the Company is sine qua non. Learned Counsel further relied upon the matter of *C.C. Alavi Haji v. Palappety Muhammed and Anr.* 2008(3) M.P.H.T. 115 (SC) : 2007 (2) DCR 321 : 2007 (3) Crimes 120 (SC) , in which the Apex Court has held that in case of non-receipt of notice, the accused, can, within 15 days of receipt of summons from the Court in respect of the complaint u/s 138 of the Act, make payment of the cheque amount and submit to the Court for discharge of its liability. Learned Counsel also relied upon the matter of *Saroj Kumar Poddar Vs. State (NCT of Delhi) and Another*, in which the Apex Court has held that in case of offence u/s 138 of the Act it is obligatory on the part of the complainant to make specific allegations as are required in law and a strict construction is necessary. Learned Counsel further placed reliance in the matter of *Ritaben Ashokbhai Shah v. Sanjay Kanubhai Seth and Anr.* 2004 Cri. LJ 1058 (Guj), in which the Gujarat High Court has held that in absence of any allegation of association of individuals, husband and wife are not association of individuals. Learned Counsel lastly relied upon the matter of *G. Hari and Others Vs. John Promod Alexander and Another*, , in which the Kerala High Court has held that the complaint filed after three months of the notice and includes the name of person who has not issued the cheque is liable to be quashed.

6. On the other hand, learned Counsel for respondent No. 3 has argued that at the time of taking cognizance the Courts are required to consider the allegation made in the complaint and not the defence of the accused. Learned Counsel further submits that in the present case, the cheque has been issued by Kamlesh Kumar Patel, the co-accused. One land acquisition proceeding was pending in which the present petitioners have received the share of complainants, then the complainants had filed a writ petition which was withdrawn on the basis of compromise and the petitioners have filed an application before the Land Acquisition Authority with a cheque of Rs. 50,000/-for discharge of the dues accrued in favour of the respondents. The cheque was signed by accused Kamlesh Kumar Patel, same was received by the Land Acquisition Authority and delivered to the respondents. When the respondents presented the said cheque

for encashment, it was dishonoured on which notice of demand has been served upon the petitioners, but they have failed to pay, thereafter, the respondents have filed the present complaint. On the basis of the statement on affidavit the Court below has registered case against the petitioners including Kamlesh Kumar Patel, brother of respondent No. 3 herein. Learned Counsel also submits that the cheque was executed in favour of the respondents by "association of individuals" and the petitioners and Kamlesh Kumar Patel are members of "association of individuals". In the present case, the cheque has not been issued by only accused Kamlesh Kumar Patel in discharge of liability accrued against Kamlesh Kumar Patel, but the cheque has been issued by Kamlesh Kumar Patel on behalf of all the accused persons in discharge of liability accrued against all the petitioners and the present complainant has specifically made allegation in his complaint to this effect, therefore, the present complaint against the petitioner is maintainable under the law.

7. At the time of taking cognizance the Court is required to see the material adduced on behalf of the complainant or the prosecution and if the materials produced on behalf of the complainant or the prosecution is sufficient for taking cognizance against the accused persons, then the Court is competent to take cognizance and issue process against the accused persons. As has been held by the Apex Court in the matters of S.M.S. Pharmaceuticals, Sabitha and Saroj Kumar (supra), it is obligatory on the part of the complainant to make specific allegations as are required by law and to state the liability of each accused. As has been held by the Apex Court in the matter of Anil Hada (supra), the complainant is required to file complaint against the Company as well as its Director in case of offence committed by the Company.

8. In the present case, the complainant has made specific allegation against all the accused persons that all the accused persons were liable for discharge of liability and all the accused persons have filed an application before the Land Acquisition Authority along with a cheque of Rs. 50,000/- signed by accused Kamlesh Kumar Patel. The cheque was delivered to the complainant by the Land Acquisition Authority and when it was presented for encashment, same was dishonoured. After compliance of the provisions of Section 138 of the Act, the respondents have filed complaint against all the accused persons. According to the allegations made in the complaint all the accused persons are liable for discharge of liability accrued under the alleged cheque.

9. In case of offences by companies u/s 141 of the Act, 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, is liable for discharge of the liability. The word "company" has been defined for the purpose of Section 141 of the Act, which reads as follows:

"Company" means any body corporate and includes a firm or other association of individuals.

10. According to the allegation of the complaint all the persons who were liable to discharge the liability accrued under the cheque have been made as accused with a specific allegation that all the accused persons are liable for payment of 1/3 rd share to the respondents and they have presented the cheque in discharge of liability jointly before the Land Acquisition Authority.

11. While dealing with the question of "association of individuals" the Gujarat High Court in the case of Ritaben (supra), held that in absence of joint allegation that husband and wife were an association, wife has not been held liable in case of cheque issued by husband. It was further held that there must be an indication of existence of an association among the individuals to attract the provisions of Section 141 of the Act. u/s 141 of the Act the Company has been defined and it includes other "association of individuals". With a view to fasten liability upon the persons other than the juristic person, the complainant is required to make allegation that the persons against whom the complaint has been lodged are association of individuals and liable to pay debt or liability accrued under the cheque in question.

12. In the present case, the complainant has specifically made allegation that all the accused persons were liable for payment of share of the respondents/ complainant and in discharge of the aforesaid liability they have presented the cheque before the Land Acquisition Authority with an application signed by all the accused persons. These allegations in the complaint are sufficient to attract the liability of all the accused person in terms of association of individuals.

13. Learned Court below has taken cognizance against all the accused persons including the present petitioners on the basis of allegation made in the complaint which is sufficient material for taking cognizance against the petitioners and issuance of notice unless the same is rebutted. Learned Judicial Magistrate First Class has not committed any illegality in taking cognizance and learned Additional Sessions Judge has also not committed any illegality in dismissing the revision and affirming the order taking cognizance passed by the Judicial Magistrate, First Class.

14. Consequently, I do not find any scope for interference in terms of Section 482 of the Cr.PC. The petition is, therefore, liable to be dismissed and it is accordingly, dismissed.