

(2001) 10 DEL CK 0055
In the Delhi High Court
Case No : Criminal M. (M) 3055/99

Sh. Mukesh Aggarwal

APPELLANT

Vs

State and another

RESPONDENT

Date of Decision : 04-10-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482, 483
Negotiable Instruments Act, 1881 (NI) — Section 138
Prevention of Food Adulteration Act, 1954 — Section 17

Citation : (2002) 1 CivCC 327 : (2001) 94 DLT 374 : (2001) 60 DRJ 779 :
(2002) 1 RCR(Criminal) 122

Hon'ble Judges : Kripa Shankar Gupta, J

Bench : Single Bench

Advocate : Sh. A.K. Singla, for the Appellant; Sh. Sunil K. Kapoor and Sh. Arun Sinha, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Gupta, J.—In this petition filed u/s 482 and 483 Cr.P.C. seeking setting aside of order dated 9th August 1999 passed in CrI.Revision No. 41/98 by an Additional Sessions Judge, the facts lie in a narrow compass. The petitioner filed a complaint on 27th March 1997 u/s 138 of the Negotiable Instruments Act, 1881 (for short the "Act") against M/s. Vogue Apparels also impleading its partners M.P. Singh, Ms. Roop Kataria @ Sonia, Jaimal Singh and Amarpreet Singh as accused 2 to 5 alleging that pursuant to the order dated 16th October 1996, the petitioner supplied cloth worth Rs. 4,68,389/- on 19th October 1996 vide invoice No. 206, Rs. 2,29,252/- on 19th October 1997 vide invoice No. 207, Rs. 4821/- on 15th October 1996 vide invoice No. 205 to accused persons. Amounts of Rs. 625/- had been added in invoice Nos. 206 and 207 towards cartage charges. It is further alleged that to liquidate the balance amount of Rs. 2,50,000/- on account of the supplies made, accused No. 2 on behalf of remaining accused issued cheque dated 28th December 1996 for Rs. 2,50,000/- drawn on Punjab National Bank, K.G. Marg, new Delhi to the petitioner. On receipt of memo dated 6th

February 1997 regarding dishonour of said cheque second time, the petitioner got sent a legal notice dated 14th February 1997 to accused persons through registered AD covers as also under certificate of postings. However, despite service of notices the amount of cheque was not paid. Accused had thus committed offence punishable u/s 138 of the Act. After recording pre-summing evidence vide order dated 24th April 1998 the accused were summoned to face trial for the said offence. Feeling aggrieved, the accused No. 3 / respondent No. 2 herein filed aforesaid CrI.Revision No. 41/98 which was allowed by the order dated 9th August 1999 setting aside the summoning order qua her.

2. Submission advanced by Sh. A.K. Singla for petitioner was that respondent No. 2 was / is responsible for conduct of business carried in partnership in the name of M/s. Vogue Apparels Along with other partners under the Indian Partnership Act, 1932 and the plea taken by her, she being not vicariously liable for the criminal liability arising out of dishonour of said cheque could have been gone into only during trial. Reliance was placed on the decision in *Orient Syntex Ltd and others vs. Besant Capital Tech Limited*, Akola 2003(3) Crimes 450. Submission is, however, without any merit. Section 141 of the Act which is material, runs as under:-

"141. Offences by companies- (1) If the persons committing an offence u/s 138 is a company, every persons 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 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."

3. In the decision in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, which was quoted with approval in *State of Haryana Vs. Brij Lal Mittal and Others*, , it was held:-

"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 in charge of and responsible for the conduct of business of accused 2 at the time of sampling.

According to this Clause, 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, respondent 2 to 4.

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 favor with the High Court which quashed the proceedings against the Directors as also against the Manager, respondent 1.

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 as 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.

We, however, do not agree that even accused 3, respondent 1, who is Manager of the Company and Therefore directly in charge of its affairs, could fall in the same category as the Directors. hence, we would set aside that part of the judgment of the High Court which quashes the proceedings against the Manager, respondent 1 (Ram Kishan Rohtagi)."

4. This decision was rendered with reference to section 17 of Prevention of Food

Adulteration Act, 1954 which is by and large similar to said section 141. It is pertinent to note that in Para No. 1 of the complaint (Ann.A) it is alleged that M/s. Vogue Apparels is a partnership firm of which accused 2, 3, 4 and 5 are the partners. In Para No. 6 it is stated that accused No. 2 on behalf of accused 1, 3, 4 and 5 gave cheque of Rs. 2,50,000/- dated 28th December 1996 to the complainant. In Para No. 7 it is alleged that on re-presentation the cheque was dishonoured for want of sufficient funds and returned Along with memo dated 6th February 1997 to the complainant. In Para 9 it is claimed that despite service of legal notice dated 14th February 1997 the accused have failed to make payment of the cheque. It may be noticed that in none of the said paras of complaint it is alleged that respondent No. 2 / accused No. 3 was in charge of and was responsible to the partnership firm for conduct of its business or that she had consented or connived to the commission of said offence within the meaning of above sub-section (2) of section 141 nor was such an evidence u/s 200 Cr.P.C. adduced by the petitioner. Civil liability for payment of amount of said cheque is distinct from criminal liability and the provisions of Indian Partnership Act, thus, have no relevance in the matter. Taking note of the ratio in Ram Kishan Rohtagi's case (supra) no fault can be found with aforesaid order dated 9th August 1999. Reliance on Orient Syntex Ltd's case is misplaced. Petition, thus, deserves to be dismissed having no substance.

5. Resultantly, the petition is dismissed.