(1999) 07 GUJ CK 0029

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No''s. 4703, 4704, 4705, 4707 to 4710 and 4712 to 4718 of 1998

Smt. M. Sivakami APPELLANT

Vs

Bharat Ginning and Oil Mill Factory RESPONDENT

Date of Decision : 28-07-1999

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 141(1)

Citation : (2000) CriLJ 1043 : (2000) 1 RCR(Criminal) 565

Hon'ble Judges : A.L. Dave, J

Bench : Single Bench

Advocate : H.J. Shah, for Rajendra M. Kapasi, for the Appellant; Mehul Shah and Maulin Rawal and S.P. Dave, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Dave, J.—Rule. Mr. Mehul Shah, the learned advocate for respondent No. 1, Mr. Maulin Rawal, learned APP and Mr. S. P. Dave, learned APP for respondent No. 2 waive service of rule. This group of petitions arises out of the order that came to be passed by the learned JMFC, Wankaner in respect of the application given by the present petitioner to quash the proceeding''s and discharge the petitioner who is one of the accused persons in the respective complaints, which came to be filed by respondent No. 1 herein, viz., Bharat Ginning and Oil Mill Factory and Jalaram Industries in the respective petitions u/s 138 of the Negotiable Instruments Act, 1881. The said application was rejected and hence the petition.

2. The quashing of the complaint is sought in exercise of powers u/s 482 of the Criminal Procedure Code by the original accused No. 5--the present petitioner on the ground that she is only a director of the accused-company and not involved in the day-to-day affairs of the company and she cannot be considered as "person in charge of or responsible to the company for the conduct of the business of the company as contemplated u/s 141 of the Negotiable Instruments

Act". It is further contended that she is aged and ailing and, therefore, also she deserves to be exonerated by quashing the complaint against her.

3. Mr. H. J. Shah, the learned advocate appearing for the petitioner submitted the contentions raised in the petition. According to him, the learned magistrate has not considered the arguments advanced on behalf of the petitioner. The resolution dated April 24, 1987, which was produced before the magistrate has also not been considered by him. There seems no participation by the petitioner. There is no specific allegation about the petitioner''s participation in the business. There is no allegation against the petitioner that the petitioner is involved in the day-to-day affairs of the company and is a person in charge. Mr. Shah has pressed in service the following decisions :

(1) N. Doraisamy and others Vs. Archana Enterprises, ;

(2) Sharda Agarwal and Others Vs. Additional Chief Metropolitan Magistrate, ;

(3) Mahendra Pratap Singh Ratra and Another Vs. N.K. Metals and Another, .

4. He submitted that these decisions indicate that only a person who is responsible to the company for the day-to-day affairs of the business of the company could be held responsible for the liability u/s 138 of the Negotiable Instruments Act as provided u/s 141 of the Negotiable Instruments Act.

5. Mr. Mehul Shah, the learned advocate for respondent No. 1 has vehemently opposed this set of petitions. He says that the conduct of the petitioner is required to be seen. Earlier the petitioner had preferred a petition before this court which came to be withdrawn. Thereafter, a discharge application was preferred before the learned magistrate and because that came to be rejected, the petitioner is before this court. Mr. Shah has raised an objection that because the earlier petition was withdrawn, this petition would not tenable. Another contention raised by Mr. Mehul Shah is that the resolution that was relied upon by the other side was subsequent to lodging of the complaint. The resolution relied upon here is only in relation to the operation of the bank account and does not speak of anything as to administration and management of the company as to who is responsible for the management and, therefore, this cannot help the petitioner for quashing of the complaint. Mr. Mehul Shah then further submitted that it is a question of evidence as to who is responsible and whether the petitioner was not responsible as contemplated in the proviso u/s 141 of the Negotiable Instruments Act. He has also taken this court through the complaint particularly para. 2 wherein it has been categorically alleged that accused Nos. 2 to 7 are the authorised persons of the mill. What could this sentence mean, would be a question of evidence and interpretation and, therefore, he urged that at this stage, this court may not exercise powers u/s 482 of the Criminal Procedure Code.

6. Mr. Rawal as well Mr. S. P. Dave appearing for the State submit that appropriate orders may be passed.

7. Having taken into consideration the rival side contentions raised by the parties concerned, what transpires is that the complaint states that accused Nos. 2 to 7 (the present petitioner is accused No. 5) are the authorised persons of the mill. It would not be proper to expect the complainant to reproduce ad verbatim the phraseology of the section in question. What is tried to be conveyed by the phrase "authorised person/s" would be a matter of evidence and interpretation. Under these circumstances, the first contention that the complaint is silent about the averment that the present petitioner is not responsible for the business of the company cannot be entertained at this stage while deciding a petition for quashing of the complaint. Secondly, the resolution which is relied upon by the petitioner dated April 24, 1987, produced on record only indicates that it authorised certain persons to operate the bank account. Operation of the bank account in itself is not the only the business of the company. Section 141 contemplates persons in charge of and responsible to the company for the conduct of the business of the company. Operation of the bank account is only a part of the business or management of the company, ancillary to the main business and, therefore, non-inclusion of the name of the petitioner in this resolution cannot be taken to indicate or mean, at this stage of quashing as sufficient to hold that the petitioner has discharged the burden as required under the proviso to Section 141(1) of the Negotiable Instruments Act and, therefore, also this contention cannot be helpful to the petitioner. As regards the decisions relied upon by Mr. H. J. Shah in the case of N. Doraisamy v. Archana Enterprises [19991 97 Comp Cas 129, the Madras High Court held that the company as well as the person in charge of and responsible to the company for the conduct of business of the company would be liable to the punishment. However, such officer can escape from this liability only if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent such commission of such offence. The petitioner is not entitled to protection prima facie, because, for the reasons recorded above, the resolution that is relied upon, does not in itself indicate that the petitioner was not the person responsible to the company for the conduct of the business of the company. It would however, be open to the petitioner to prove at the trial that she was not the responsible person as contemplated u/s 141 of the Negotiable Instruments Act.

8. As regards the decisions in the case of Sharda Agarwal and Others Vs. Additional Chief Metropolitan Magistrate, , relied upon by Mr. H. J. Shah, it may be noted that in that case the complaint did not say that the petitioner/director of the company, was also in charge of the business of the company. Here, as discussed above, the case is different. The complaint bears the allegation against the accused petitioner and, therefore, this decision cannot be helpful to the petitioner.

9. In the case of Mahendra Pratap Singh Ratra v. N. K. Metals [1999] 97 Comp Cas 152 (Del) the issue was that the cheques in question were issued by the chairman and managing director of the accused-company. There was no

allegation that in the complaint or pre-summoning evidence, that the petitioner/ director was at any point of time directly or indirectly in charge of and responsible to the company for its business and, therefore, it was held that the petitioner could not be roped in u/s 141 of the Act. But in the instant case, as discussed above, there is an averment in the complaint and it would be a question of evidence, therefore, to decide whether the petitioner was or was not responsible for the conduct of the business of the company.

10. Mr. Mehul Shah has also drawn the attention of this court to a xerox copy of certified copy of the decision rendered in Criminal Miscellaneous Application No. 1380 of 1998, dated May 4, 1998, in relation to some complaints preferred by the petitioner which came to be withdrawn by the petitioner while reserving liberty to file appropriate application for discharge or dropping of application against them. He has also drawn the attention of this court to the decision of this court in Criminal Miscellaneous Application No. 4380 of 1998 rendered on November 24, 1998. These petitions came to be withdrawn. Mr. Mehul Shah therefore urged that the conduct of the petitioners indicates a clear intention of delaying the complaints.

11. It is undisputed that the petitioner is a director of the company and, therefore, in the absence of any other material to show that her case falls into an exception as provided for under the proviso to Section 141(1) of the Negotiable Instruments Act, the petitions cannot be entertained and must therefore fail and are dismissed accordingly. Rule discharged. Interim relief stands vacated.