

(2014) 03 CAL CK 0118
In the Calcutta High Court
Case No : CRR 3452 of 2013

Srabonti Ganguli

APPELLANT

Vs

Industrial Development Bank of India

RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Companies Act, 1956 — Section 291 5
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138 141

Citation : (2014) 2 BC 376

Hon'ble Judges : Subrata Talukdar, J

Bench : Single Bench

Advocate : Pratik Kr. Bhattacharya and Sri Sourav Mukherjee, for the Appellant;
Shyam Sundar Manna, for the Respondent

Judgement

Subrata Talukdar, J.—This Criminal Revisional Application u/s 482 of the Code of Criminal Procedure has been filed praying for quashing of the proceedings being Complaint Case No. 657 of 2002 pending before the Learned Metropolitan Magistrate, 6th Court, Calcutta under Sections 138 and 141 of the Negotiable Instruments Act, 1881 (for short The NI Act). Heard Sri Bhattacharya, Learned Counsel for the petitioner and Sri Manna, Learned Counsel for the sole opposite party.

2. The brief facts of the case are as follows:--

That the petitioner is the accused No. 4 in a complaint lodged by the opposite party - Bank on 15th February, 2002 before the Learned Chief Metropolitan Magistrate, Calcutta u/s 138 read with Section 141 of the NI Act. The Learned Magistrate took cognisance of the complaint and directed issuance of summons on 16th March, 2002.

3. The primary contention of the petitioner is that no complaint could be lodged against her under the said provisions of the NI Act on the ground that she is not the drawer of the cheque. The petitioner states that neither did she issue any

cheque on behalf of the accused No. 1 company, Shamon Ispat Limited nor she was responsible for any decision connected with the issuance of such cheque on behalf of the said company.

4. In the light of the aforesaid pleadings in the petition Sri Bhattacharya has argued that the petitioner, even if she was a Director of the said company, viz. Shamon Ispat Limited, she cannot be mechanically treated as an accused in the impugned complaint proceedings. Taking this Court through the complaint filed before the Learned 6th Metropolitan Magistrate, Calcutta, which is annexed to the Revisional Application. Sri Bhattacharya has drawn the attention of this Court to paragraph 3 thereof. He points out that the use of the words "as such" in respect of the petitioner-accused No. 4 is not enough to vicariously rope her as an accused in the complaint.

5. Sri Bhattacharya has further drawn the attention of this Court to paragraph 10 of the said complaint which, according to him, does not contain specific averments with regard to the exact role played by the petitioner in issuance of the cheque in question. He has argued that the averments pertaining to the vicarious liability of the petitioner, if any, are reflected in the pleadings at paragraph 10 of the said complaint. Such pleadings, according to him, are non-specific in nature and the petitioner as the accused No. 4 has been clubbed with the other accused Nos. 2, 3, 5 & 6 by making a general statement to the effect that the accused persons "were managing the affairs of the accused No. 1 and are also responsible for the day to day business of the accused No. 1 and the offences committed in this transaction they have also committed the offence u/s 138 read with Section 141 of the NI Act, 1881."

6. Sri Bhattacharya asserts that in the light of the aforementioned pleadings the requirements of Section 141 of the NI Act have not been complied with in the petition of complaint. Such bald and general allegations without there being any mention of any specific involvement of the petitioner in the transaction culminating in issuance of the cheque in question, no complaint u/s 138 read with Section 141 of the NI Act can lie against the petitioner. Sri Bhattacharya also brings to the notice of this Court that there is no reference in the complaint to any meeting of the Board of Directors of the said company, Shamon Ispat Limited which could show any involvement of the petitioner in the transaction in question.

7. In the light of the above factual scenario Sri Bhattacharya prays for quashing of the complaint proceedings qua the petitioner pending before the Learned 6th Metropolitan Magistrate, Calcutta.

8. Sri Bhattacharya fortifies his arguments by referring to several decisions of the Hon"ble Apex Court and of this Court on the point of vicarious liability of an officer of a company in an offence u/s 138 read with Section 141 of the NI Act.

9. He relies upon the following decisions:--

- i) Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others,
- ii) S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another,
- iii) Sabitha Ramamurthy and Another Vs. R.B.S. Channabasavaradhya,
- iv) K.K. Ahuja Vs. V.K. Vora and Another,

10. He further relies upon two unreported decisions of this Court in connection with cases filed by two of the accused persons of the same company, viz. Shamon Ispat Limited arising out of the same transaction. The said two decisions are in the matter of T.C. Dutta, Chairman, Shamon Ispat Limited (Judgment dated 4th October, 2011 in CRR 3092 of 2010) and Jaidev Kumar Basu alias J.K. Basu v. Industrial Development Bank of India (Judgment dated 29th July, 2013 in CRR 2638 of 2012).

11. Pursuant to the leave granted by this Hon"ble Court on 20th February, 2014 Sri Bhattacharya has brought on record by way of a supplementary affidavit, with copy served on Sri Manna, the said two unreported decisions of this Court in CRR 3092 of 2010 and CRR 2638 of 2012.

12. The judgment in Municipal Corporation of Delhi v. Ram Kishan Rohatgi and Ors. (supra) is on the principle of vicarious and/or constructive liability. In the facts of the said case the Hon"ble Apex Court was pleased to hold, inter alia, that proceedings against an accused can be quashed in the initial stages in exercise of powers u/s 482 of the CrPc. Such powers can be exercised by the Court which, on examination of the complaint finds that ex facie no offence is made out against the Directors of a company. No complaint can be held to lie on mere presumption that the accused were in charge of and responsible for the conduct of the business of the company. Hence, the Hon"ble Apex Court was pleased to quash the proceedings in respect of the Directors of the said company while allowing the proceedings to continue qua the manager of the company on the ground that it is manifest that he had a knowledge of the affairs of the sale and manufacture of the disputed sample.

13. The next case cited by Sri Bhattacharya, S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr. (supra) is an authority on the point that necessary averments ought to be disclosed in a complaint before a person can be subjected to criminal process. The Hon"ble Apex Court held that in order to make out an offence u/s 141 of the NI Act the complaint must disclose the necessary facts which make a person liable. It is necessary to specifically aver in a complaint that at the time the offence was committed the person accused was responsible for and in charge of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. This test would apply to a Director in a company who cannot be deemed to be in charge of and responsible to the company for the conduct of its business and hence, there is no deemed liability of a Director in all cases unless the requirement of 141 of the NI Act is met on facts in the complaint.

14. The next case cited by Sri Bhattacharya, Sabita Ramamurthy and Anr. v. R.B.S. Channabasavaradhya (supra) is an authority on the point that vicarious liability of accused persons such as Managing Director and other Directors of a company can be inferred only if clear statement of facts is made against such accused persons in the petition of complaint. The complainant is required to show on oath as to how the said accused persons were responsible for committing the said offence under the NI Act.

15. K.K. Ahuja v. V.K. Vora and Anr. (supra) case is an authority on the point that if the person is to be made liable then it is necessary to aver consent and connivance or negligence on his part. The role played by the accused person must be specifically averred in order to draw the inference of vicarious and/or constructive liability against him.

16. The unreported judgments in CRR 3092 of 2010 and CRR 2638 of 2012 arise out of the same transaction in respect of which the present petitioner prays for quashing of the proceedings pending before the Learned 6th Metropolitan Magistrate, Calcutta qua her.

17. In CRR 3092 of 2010 an Hon''ble Single Bench of this Court was pleased to notice several decisions of the Hon''ble Apex Court in details and came to the finding that in the case in hand before the Hon''ble Court the petition of complaint is "nothing but, in fact and in substance, the reproduction of languages in Section 141". The Hon''ble Single Bench was pleased to consider several sections of the Companies Act and held, in the facts of that case "the petitioner herein admittedly is the Chairman of the company and is not the Managing Director or the Financial Director or Director in Charge of the day to day business of the company."

18. The Hon''ble Single Bench further held as follows:--

Issuance of cheque of the company is not a function of a Chairman of a company. The Chairman can at best be held responsible for policy making decision of the company. That is why he kept outside Section 5 and Section 291 of the Companies Act amongst the person who are responsible to the company for the conduct of the business of the company.

19. In the light of the above discussion the Hon''ble Single Bench was pleased to allow CRR 3092 of 2010 and quash the complaint proceedings in case No. 657 of 2002 pending before the Learned 6th Metropolitan Magistrate, Calcutta qua the petitioner therein.

20. CRR 2638 of 2012 was filed by another Director of the same company, viz, Shamon Ispat Limited arising out of the same complaint proceedings being complaint case No. 657 of 2002.

21. After a detailed discussion on the judicial principle with regard to vicarious and/or constructive liability and on a perusal of the complaint another Hon''ble Single Bench of this Court was pleased to hold that the petitioner therein who

was described as Director of the company could not be said to be on a separate footing as the petitioner in CRR 3092 of 2010 and on the same reasoning no inference could be drawn against him of vicarious and/or constructive liability in respect of the offence alleged under Sections 138 and 141 of the NI Act. Accordingly the complaint proceedings qua the petitioner of CRR 2638 of 2012 were quashed.

22. Sri Shyam Sundar Manna, Learned Counsel for the opposite party has argued that the involvement of the petitioner in the commission of the offence alleged under Sections 138 and 141 of the NI Act as well as the vicarious and/or constructive liability of the accused petitioner can only be examined at the time of trial. He relies upon an unreported decision of this Court in CRR 756 of 2011 with CRR 955 of 2011 (Pradip Kumar Malhotra and Anr. v. The State of West Bengal and Anr.).

23. Relying on the said decision Sri Manna points out that the Hon''ble Single Bench of this Court was pleased to consider several judgments of the Hon''ble Apex Court including the judgment in S.M.S. Pharmaceuticals upon such consideration the Court was pleased to hold that the issue of vicarious and/or constructive liability qua a Director of a company is a disputed question of fact and cannot be taken into consideration in an application u/s 482 of the CrPC. The Hon''ble Single Bench was therefore pleased to hold that the constructive and/or vicarious liability qua the Director of a company can only be considered at the time of trial.

24. Having heard the parties and considering the materials on record this Court is of the opinion that the petition of complaint in case No. 657 of 2002 is woefully short of necessary and specific pleadings with regard to the role of the petitioner-accused No. 4 in the commission of the alleged offence under Sections 138 and 141 of the NI Act. This Court notices that there is only a specific averment with regard to the role of the accused No. 1 company pursuant to the loan agreements entered into between the accused No. 1 company and the complainant Corporation namely, the Industrial Development Bank of India pursuant to which the accused No. 1 company "executed various security documents for due repayments of the loans, interests and other moneys due under the said loan agreements."

25. There is no specific averment with regard to the role played by the petitioner-accused No. 4 in the affairs of the accused No. 1 company excepting the bald and general averments at paragraph 10 of the complaint which have already been referred to above in this judgment.

26. In such circumstances and having regard to the catena of decisions passed by the Hon''ble Apex Court as relied upon by Sri Bhattacharya, it cannot be ignored that in the absence of specific averments with regard to the exact role played by the petitioner-accused No. 4 in the affairs of the company disclosing her liability and/or role in the transaction in question revolving around the

issuance of the said cheque, merely roping in the petitioner-accused No. 4 in the complaint will amount to an abuse of the process of law. This Court respectfully concurs with the ratio of the decisions laid down by the Hon''ble Apex Court that a clear case should be spelt out in the complaint against the person sought to be made liable.

27. Furthermore, there can be little doubt that the petitioner-accused No. 4 is similarly circumstanced like the petitioner-accused No. 3 in CRR 3092 of 2010 and identically circumstanced like the petitioner-accused No. 5 in CRR 2638 of 2012. In fact the present petitioner, accused No. 4 and the petitioner-accused No. 5 in CRR 2638 of 2012 are both clubbed with identical pleadings in the petition of complaint as Directors of the said company, Shamon Ispat Limited and hence, is entitled to equal relief.

28. Having considered the rival submission, the materials on record and the legal propositions applicable to the facts of this case, the proceedings being Complaint case No. 657 of 2002 pending before the Learned 6th Metropolitan Magistrate, Calcutta u/s 138 read with Section 141 of the NI Act are quashed qua the petitioner.

29. CRR 3452 of 2013 is thus allowed on contest. There will be however no order as to costs. Urgent certified photocopies of this judgement, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.