

**(2005) 01 KAR CK 0060**  
**In the Karnataka High Court**  
**Case No : Criminal P. No. 2906 of 2004**

Sri K. Chandrasekhar and Another

APPELLANT

Vs

Mac Charles India Ltd.

RESPONDENT

---

**Date of Decision :** 04-01-2005

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 255, 482  
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142

**Citation :** (2005) 1 ALD(Cri) 35 : (2005) 3 BC 586 : (2005) 2 CivCC 100 :  
(2005) 126 CompCas 172 : (2005) CriLJ 1120 : (2005) ILR (Kar) 395 : (2005) 2  
KarLJ 124 : (2005) 1 KCCR 49 SN : (2005) 2 RCR(Criminal) 377

**Hon'ble Judges :** Huvadi G. Ramesh, J

**Bench :** Single Bench

**Advocate :** Srivatsa Associates, for the Appellant; B.S. Satyanand, for the  
Respondent

---

## Judgement

Huvadi G. Ramesh, J.—This petition is filed u/s 482, Cr.P.C. seeking for calling the records in connection with Criminal Revision 394/04 on the file of the Addl. District & Sessions Judge /Fast Track Court IV, Bangalore and to set aside the order dated 17.8.2004 and also the order passed by the XX Addl. Chief Metropolitan Magistrate, Bangalore dated 5.8.2004 on the application filed by the petitioners u/s 255, Cr.PC in CC 23005/1997 and to allow the said application. Brief facts are:

2. The respondent has filed a complaint against these petitioners who are arrayed as accused 11 and 12 along with ten others. For the alleged offence u/s 138 r/w 141 and 142 of the Negotiable Instruments Act. In the complaint it is alleged that the 1st accused is a company registered under the Companies Act, the 2nd accused is the Managing Director of the said company and the registered office of the company is located at Mumbai. The accused company is conducting business in dairy and dairy products and accused 3 - 10 are the Directors of the 1st accused company. Accused 11 and 12 - petitioners herein, are the employees of the 1st accused company. It is stated that accused 2 to 10 were in-charge of

the day-to-day affairs of the company at the time of commission of the alleged offence. It is further alleged that all the accused jointly conspired and connived in committing the offence as contemplated under the Negotiable Instruments Act. It is stated that on behalf of the 1st accused company, the other accused availed the facility of discounting the Bill of Exchange against the cheques paid by their suppliers in the course of business, from the complainant. The complainant - respondent had discounted two bills of exchange raised on the accused company - one No. 112 dated 26.9.1996 for Rs. 2,50,000/- by C S Printers, Bombay and another No. 117 dated 12.10.1996 for Rs. 51,42,500/- by C S Printers, Bombay. The accused, in repayment of the discounted bills on the above account, is said to have issued two cheques dated 23.11.1996 for Rs. 25,74,000/- and Rs. 26,92,800/- drawn on Canara Bank, Trinity Circle, Bangalore with a request to the complainant - respondent to present the same for realisation during the month of March 1997 and assured payment. As per the understanding, when the cheques were presented for realisation through their bankers M/s State Bank of India, Industrial Finance Branch, Bangalore, both the cheques were dishonored due to insufficient funds. Thereafter, the complainant is said to have issued registered notices dated 15.3.1997 and 17.3.1997. Notices were said to be issued through certificate of posting also calling upon the accused to make payment within fifteen days. Since there is violation on the part of the accused persons to make payment, complaint is said to have been filed alleging that accused 11 and 12 who are the petitioners herein, are the authorised signatories of the 1st accused company; that all other accused were in-charge of the affairs and were aware of the financial transaction of the company, the operation of the bank account and availability of funds at the time of issuing cheques and in spite of the same, willfully and with an intention to defraud the complainant, two cheques were issued and thereby the accused have committed offence u/s 138 of the Negotiable Instruments Act.

3. The complaint was presented before the XX Addl. Chief Metropolitan Magistrate, Bangalore. It appears that cognizance was taken and thereafter, the matter was posted for sworn statement during 1997. Subsequently, during pendency of the matter before the XX Addl. Chief Metropolitan Magistrate, an application is said to have been filed by the present petitioners who are accused 11 and 12 in the complaint u/s 255, Cr.PC seeking for acquittal. The said application has been contested and thereafter, order has been passed on 8.8.2004 dismissing the application filed by the petitioners imposing costs against which revision petition was preferred before the Addl. Sessions Judge & Fast Track Court IV in CrI.RP.394/2004 which also came to be dismissed. Hence, this petition.

4. Heard the counsel for the petitioners and the respondent -complainant.

5. It is seen, in the order passed by the learned Magistrate, the complaint was filed against twelve persons including the 1st accused company. On behalf of the 1st accused, cheques are issued. It is stated by the petitioners in the application

filed before the Magistrate that they have signed the two cheques in question as signatories. Accused 10 who was a nominee director of the company, was discharged by this Court. It is also stated in the application that after issuing of non-bailable warrant against accused 1 to 9, there is no possibility of securing them and has ordered that the case against accused 1 to 9 be split up and against accused 11 and 12, the case be numbered separately. It is submitted that it is settled law that to hold accused 11 and 12 guilty, there has to be a finding of guilt against accused 1 to 9 and no finding of guilt against the company could be given since the case against them has been split up. As such, in the absence of accused 1 to 9, accused 11 and 12 cannot be held guilty and in the application filed by the petitioners, if the case against the 1st accused is dismissed, that amounts to acquittal of the 1st accused in which case, there can be no finding of guilt against the 1st accused and consequently, the case against accused 11 and 12 has to be dismissed and the petitioners be acquitted.

6. It appears, by order dated 13.3.2000, learned Magistrate is said to have passed an order regarding split up of cases against accused 1 to 9. Accused 11 and 12 have faced trial and when the matter was posted for arguments on the main complaint, accused 11 and 12 have filed an application before the Magistrate which has been rejected against which the revision preferred before the Additional Sessions Court was also rejected. Petitioners have therefore approached this Court for relief as sought for.

7. In the written submission submitted on behalf of the petitioners, it is stated that the learned Magistrate should not have split up the case and proceeded against the petitioners in CC 23005/ 1997 for the alleged offence u/s 138 of the Negotiable Instruments Act and that the learned Magistrate ought not to have proceeded against these two petitioners who are employees of the 1st accused company and who have signed the cheques as authorised Signatories. In this regard, learned counsel relied upon the ruling in State of Madhya Pradesh and another Vs. Brijesh Kumar Awasthi and others, . It is submitted that the guilt against the company is a condition precedent to hold that the petitioners are also guilty of the offence u/s 138 of the Negotiable Instruments Act. If the trial against the company were to proceed separately, against these two petitioners, the right u/s 138 of the Act cannot be availed by the complainant. So also it is stated that before the person/ officer is held guilty it must be established that the company is guilty of the offence as is held in Sheoratan Agarwal and Another Vs. State of Madhya Pradesh, . Further, it is stated that when the complaint is made accusing the directors along with the petitioners, it is open for the petitioners to contend that the case cannot proceed against these two petitioners in the absence of the company and other directors who are also responsible and in charge of the affairs of the company. In support of his contention, learned Counsel relied on the decision in the case of Anil Hada Vs. Indian Acrylic Limited, and submitted if the company is not made a party and if the persons who are in charge and responsible for the affairs are made parties, trial u/s 138 of the Negotiable Instruments Act can proceed, but when the company is made a party,

the complainant cannot wish away.

8. On behalf of the respondent - complainant, it is submitted that the application filed by the petitioners before the Magistrate u/s 255, Cr.PC is not maintainable and that the learned Magistrate can only acquit the accused if he finds that the accused is not guilty of the alleged offence after looking into the evidence placed on record by the parties and not otherwise and as such no application u/s 255, Cr.PC seeking for discharge is maintainable. Further, it is stated that both the Magistrate and the learned Sessions Judge in revision, have not come to a definite conclusion on the allegation made in the complaint against the petitioners. Of course they have been given liberty to contend all contentions at the time of argument on merits. It is contended that petitioners are the authorised signatories on behalf of the 1st accused company and they have signed the cheques on behalf of the company and as such, the petitioners and other accused have willfully and intentionally issued two cheques with a malafide intention of deceiving the complainant.

9. It is further submitted that the case against the accused company is not split up from the main case. Since accused 1 is a juristic person, the non-bailable warrant issued cannot be executed and it has to be represented by a natural person and it is the Managing Director representing the 1st accused person against whom the case has been split up from the main case and against whom the non-bailable warrant is issued as the same could not be executed on the 1st accused and also since on the non-bailable warrant issued against accused 2 to 9 they could not be secured as such, the case was split up. It is stated that the 1st accused company is still on record and the same is not split up by the learned Magistrate and it is for the Magistrate to proceed against the persons who are available in accordance with law.

10. Section 141(1) of the Negotiable instruments Act, 1881 reads thus:

(1) If the person committing an offence u/s 138 is a company, 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, 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.

A reading of the above section makes it clear that every person who was in charge of the affairs of the company or 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. In the instant case what has been noticed is that the 1st accused is the company and other accused are the Managing Director and other directors respectively. It appears that the case is proceeded against accused 11-12 who are the petitioners, is before this Court on the ground that accused 11 and 12 are the signatories and also the officials of the company. It is their contention that when the company - 1st accused is being exonerated or split up and the case against the company is not proceeded against, the petitioners who are not responsible for the conduct of the business of the company also ought to have been acquitted and the application filed by them before the Magistrate u/s 255, Cr.P.C ought to have been allowed, and the Presiding Officer who proceeded further against the petitioners in the trial Court at the stage when the case was split up against accused 1 to 9, ought not to have done so as against accused 11 and 12 / petitioners who are signatories to the cheque and they cannot be held liable.

11. It is well settled by the decision of the Apex Court that if the company is under winding up proceedings it need not necessarily be made a party and the proceedings can be continued against other accused persons who are responsible for the conduct of the business of the company. In the decision in *Anil Hada Vs. Indian Acrylic Limited*, , it is held thus:

When a company which committed the offence u/s 138 eludes from being prosecuted thereof; on account of complaint against it being dropped because of winding up proceedings ordered by Court, the Directors of that company can be prosecuted for that offence. The effect of reading Section 141 is that when the company is the drawer of the cheque such company is the principal offender u/s 138 of the Act and the remaining persons ie., viz., everyone who was in charge of and was responsible for the business of the Company and any other person who is a director or a manager or a secretary or officer of the company, with whose connivance or due to whose neglect the company has committed the offence who are persons falling within categories second and third of Section 141(1) and (2) are made offenders by virtue of the legal fiction created by the Legislature as per the section. Hence, the actual offence should have been committed by the company and then alone the aforesaid two categories of persons can also become liable for the offence. If the offence was committed by a company it can be punished only if the company is prosecuted. But instead of prosecuting the company if a payee opts to prosecute only the persons falling within the second or third category the payee can succeed in the case only if he succeeds in showing that the offence was actually committed by the company. In such a prosecution the accused can show that the company has not committed the offence, though such company is not made an accused and hence the

prosecuted accused is not liable to be punished. The provisions do not contain a condition that a prosecution of the company is sine qua non for prosecution of the other persons who fall within the second and the third categories mentioned above. No doubt a finding that the offence was committed by the Company is sine qua non for convicting those other persons. But if a company is not prosecuted due to any legal snag or otherwise, the other prosecuted persons cannot, on that score alone, escape from the penal liability created through the legal fiction envisaged in Section 141 of the Act. Even if the prosecution proceedings against the company were not taken or could not be continued, it is no bar for proceeding against the other persons viz., Director, in instant case, falling within the purview of Sub-sections (1) and (2) of Section 141 of the Act.

The ratio laid down in the above cited ruling is to the effect that the proceedings is maintainable against other directors when it cannot be proceeded against the company against which winding up proceedings had been initiated.

12. Further, as provided in the exception to the proviso to Section 141 of the Negotiable Instruments Act nothing contained in the 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. As per this proviso, it is for accused 11 and 12 to make out a case to the effect that the dishonour of cheque was without there being a role by them and also without their involvement and that they are not liable to be held guilty of the offence.

13. Apart from that, keeping in view that the proceedings u/s 138 of the Negotiable Instruments Act being quasi-criminal in nature and also in the nature of coercive measure for breach of contract, instead of splitting up the case as against accused 1 to 9, the trial Court could have directed the complainant to take all steps to proceed against them in accordance with the procedure provided as well under the CPC to cause service of notice by way of substituted service i.e. paper publication, when summons issued could not be effected and warrant issued could not be executed for various reasons, after proper efforts are being made to serve the summons or warrant as the case may be. It is stated in the complaint that the Managing Director, Director and other persons are in charge and responsible for the conduct of the business of the 1st accused company. If summons and warrant could not be served, the next mode would be to take notice by way of substituted service i.e. by way of paper publication and to proceed against accused 1 to 9 holding sufficiency of service on such publication, on the non appearance of accused 2 to 9 and not representing accused 1 on such publication., they can be proceeded exparte, since Section 138 of the Negotiable Instruments Act prescribes for imposition of fine as well as order them to pay compensation/penalty apart from punishing them by way of imprisonment. If it is found that accused 1 to 9 or these petitioners or any of them are guilty of the offence after trial, they would be convicted by way of imposing fine and order to pay compensation and may also be sentenced for imprisonment. As it is well

known accused I being an artificial person, there can only be an order to pay penalty and compensation and the question of sentencing for imprisonment does not arise if it is found guilty.

14. Some times, the complainant would not be knowing as to the internal functioning of the accused company such as, at whose instance the cheques are issued and whether a cheque has been issued at the instance of the Board of Directors or whether the cheques were issued in the normal course of business and whether the Managing Director. Directors or Officers in-charge of the management are liable for issuance of and dishonour of cheques. Further, it would be a burden on each of the accused to come out and say that they cannot be made liable to or in what capacity they have acted. In view of the same and also in view of the specific provision provided under the proviso to Section 141 of the Negotiable Instruments Act, the petitioners/accused 11 and 12 cannot seek exemption and also for acquittal or discharge by filing an application u/s 255, Cr.PC as observed by the Magistrate as well as the Addl. Sessions Judge in revision. Further, it has to be noted that the amount involved in the case is heavy. What is noticed in this case is that, on the basis that summons and warrant issued were not served on some of the accused, i.e., A2 to 9 the case as against accused 1 to 9 was split up and the case has been proceeded against accused 11 and 12 only. Of course accused 10 is said to be a nominee director and this Court keeping in view the proviso to Section 141 that a nominee director need not be made a necessary party to prosecute, has given up the proceedings against accused 10. In so far as the case against the other accused are concerned, since steps have to be taken it is for the complainant to pursue the trial court once again to reopen the case against accused 1 to 9 and take all steps to proceed against other accused so that ultimately responsibility can be fixed by the Court after hearing who are all responsible for the conduct of the business of the 1st accused company and at whose instance such default/dishonour of cheque has taken place and also who is liable for payment.

15. In view of the discussion made above, the order of splitting of the case against accused 1 to 9 is liable to be quashed and the case has to be re-opened against accused 1 to 9 and proceeded simultaneously with a direction to the complainant - respondent to take steps once again as provided under law. Thereafter, the trial Court shall deal with the matter as against all the accused. Since already the matter is at the stage of conclusion and the case is set up for arguments of accused 11 and 12, ultimately if it is found that accused 11 and 12 are not responsible for the conduct of business, they would be acquitted. In order that the complainant should not suffer any loss and in order that interest of justice be secured, the complainant - respondent shall take all steps to reopen the case as against accused 1 to 9 as well. Since the trial Court has already split up the matter against accused 1 to 9 who are also said to be responsible as alleged in the complaint, I deem it appropriate even at this juncture, to direct the trial Court to reopen and hear the matter against all the accused except accused 10.

16. In the result, the impugned order of splitting the case against accused 1 to 9 is set aside. The petition is disposed of with a direction to the complainant to take steps to proceed against accused 1 to 9 as well in addition to accused 11 and 12. The petitioners herein are at liberty to take all the best defense available to them to prove their innocence in the conduct of business of the company. Thereafter, the trial Court shall pass orders according to law, keeping in view of the observations made above.