

(1991) 09 MAD CK 0024

In the Madras High Court

Case No : Criminal Original Petition No. 4276 of 1991

Sri Sivasakthi Industries

APPELLANT

Vs

Arihant Metal Corporation

RESPONDENT

Date of Decision : 24-09-1991

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (1992) CivCC 388

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : V. Krishnamoorthy, for the Appellant; A.K. Parthasarthy, for the Respondent

Judgement

Pratap Singh, J.—Accused No. 1 in CC No. 4961 of 1990 on the file of VIII Metropolitan Magistrate, George Town, has filed this petition

u/s 482, Criminal Procedure Code, praying to call for the records in the aforesaid case and quash the same.

2. The respondent has filed the private complaint against the petitioner and Raman, arraying them as accused Nos. 1 and 2 for an offence u/s 138,

Negotiable Instruments Act. The allegations in it are briefly as follows :

3. The first accused is a firm represented by its proprietor, Raman. The second accused is Raman. The first accused purchased raw materials from

the complainant on April 25, 1990. Towards the same, the second accused issued a cheque for Rs. 31,623.75 on the same day, in favour of the

complainant, representing the first accused as the proprietor. The cheque was presented on April 25, 1990, for collection. It was returned

dishonoured with an endorsement ""refer to drawer"". The complainant sent notice to both accused informing him of the fact of dishonour. It was

served on the second accused. Notice sent to the first accused was returned. No amount was paid even thereafter. Hence the complaint.

4. Mr. V. Krishnamoorthy, learned counsel appearing for the petitioner, would contend that, in the case of a proprietary firm, the firm has no

separate legal entity apart from its proprietor, the firm name being another name for the proprietor and hence the prosecution against the petitioner

is not sustainable. Per contra, learned counsel appearing for the respondent would contend that, as per section 141 of the Negotiable Instruments

Act, both the firm as well as the individual can be proceeded against and hence the prosecution as against both the accused can be sustained.

5. In this case, accused No. 1 is Sri Sivasakthi Industries, represented by its proprietor, Raman. Accused No. 2 is Mr. Raman. Section 141 of the

Negotiable Instruments Act deals with offences by companies. In the Explanation to section 141, it is stated as follows :

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.

6. In the instant case, the first accused is not a firm. The business name of the concern is given and then it is represented by its proprietor, Raman.

7. A proprietary concern is not a firm. A firm is a partnership concern consisting of partners. In this case, the first accused is not a firm. It is only a

proprietary concern. As such, section 141 of the Negotiable Instruments Act which enables prosecution against the company as well as other

person who, at the time the offence was committed was in charge of, and was responsible to, the company, cannot be pressed into service.

Learned counsel for the respondents was totally under an erroneous impression that the first accused is a firm. There is a basic and fundamental

difference between a "firm" and a proprietary concern. The first accused is only a proprietary concern, its proprietor being Raman. Accused Nos.

1 and 2 are one and the same person. In para 3 of the complaint, it is stated that the second accused issued the cheque. Only the drawer of the

cheque can be prosecuted. As such, the proceedings against the first accused, viz., Sri Sivasakthi Industries, represented by its proprietor, Raman,

are to be quashed. I would like to make it absolutely clear that both the accused

are one and the same person, viz., Raman. The issuance of the cheque by Raman as proprietor of Sri Sivasakthi Industries would amount to issuance of the cheque by the second accused. He is the drawer of the cheque. I am making it clear for the specific purpose that, at the time of trial of the case, no prejudice should be caused by the observations made in the course of this order to the complainant. Any contention that the cheque was issued by Raman as proprietor of Sivasakthi Industries and Raman cannot be proceeded with for an offence u/s 138, Negotiable Instruments Act, should not be countenanced by the trial court. The Complaint is maintainable against the second accused. On the ground that accused Nos. 1 and 2 are same persons and that accused No. 1 is not a firm"" as per section 141, Negotiable Instruments Act, I am quashing the proceedings as against accused No. 1.

8. In view of the above, the petition is allowed and the proceedings against accused No. 1 in CC No. 4961 of 1990 are hereby quashed. The learned Magistrate shall proceed against accused No. 2 and dispose of the case expeditiously.