

(2008) 02 DEL CK 0066
In the Delhi High Court
Case No : Criminal M.C. 1523 of 2006

Sunita Vijaykumar Deshpande	Vs	APPELLANT
Mithanlal Marketing Ltd. and Others		RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Citation : (2008) 3 BC 449 : (2008) 101 DRJ 366

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Vijay Nair, for the Appellant; Arun Kumar and Desh Raj, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—Initially, after submissions were made on behalf of the learned Counsel for the Petitioner, orders were reserved on 21st January, 2008. Subsequently, the learned Counsel for the Respondent No. 1 filed an application for permission to be heard by this Court. Learned Counsel for Respondent No. 1 has accordingly been heard today at length.

2. This is a petition u/s 482 of the Code of Criminal Procedure, 1973 ("CrPC") by Smt. Sunita Vijaykumar Deshpande seeking the quashing of an order dated 4th December, 2004 passed by the learned Additional Sessions Judge (?ASJ?), Delhi allowing the revision petition filed by the complainant and directing summons to be issued inter-alia to the Petitioner here. It also challenges an order dated 25th February, 2005 passed by the learned Metropolitan Magistrate (?MM?), Delhi passing a consequential order of summoning the Petitioner for the offences u/s 138 of the Negotiable Instruments Act, 1881 (?NI Act?) in Complaint No. 155/01 titled Mithanlal Marketing Ltd. v. Medifix Packaging Industries and Ors.

3. The Respondent No. 1, Mithanlal Marketing Limited filed the aforementioned complaint u/s 138 NI Act read with Section 417 and 420 of the Indian Penal Code ("IPC") alleging that in discharge of the legal liability of the partnership firm M/s.

Medifix Packaging Industries, a cheque No. 551013 dated 9th March, 2000 in the sum of Rs. 1,28,348/- was drawn by M/s. Medifix Packaging Industries on Ahmed Nagar Sehkari Bank Ltd., Ahmed Nagar in favor of M/s Mithanlal Marketing Limited. The said cheque when presented to the Bank for payment was returned dishonoured with the remarks "account is under litigation and court Receiver is appointed by the court to operate the said account, Drawer has the knowledge about the same".

4. Subsequently, Complaint No. 155/01/2000 was filed by the complainant in the court of the learned MM, Delhi. The firm Medifix Packaging Industries was shown as an accused through its partners. The individual partners were named and the Petitioner here, Smt. Savita Vijaykumar Deshpande, was shown at Serial No. 4.

5. Initially, summons were not issued to the individual partners and in a revision petition filed by the complainant, the learned ASJ passed an order on 4th December, 2004 holding that the partners of the firm including the Petitioner here were jointly and severally liable for all the acts of the partnership Firm and Therefore, are liable by virtue of Section 141 NI Act. The learned MM was directed to summon the individual partners for the offence u/s 138 NI Act. Consequent thereto, the learned MM passed the summoning order dated 25th February, 2005.

6. Learned Counsel for the Petitioner submits that the Petitioner is not a signatory of the cheque in question and Therefore, there is no automatic liability attaching to her as an individual partner for the offence committed by the firm u/s 138 NI Act. According to him, the Petitioner retired as a partner on 23rd August, 1999 whereas the cheque was issued on 9th March, 2000. He further submits that there is no specific averment in the complaint to the effect that the Petitioner was in charge of the affairs of the firm and responsible to it for the conduct of its business.

7. Learned Counsel for the respondent on the other hand, referred to the reply to the legal notice sent on behalf of the Firm in which it was mentioned that she had retired on 28th March, 1999. He also referred to the retirement deed which also mentioned the Petitioner as having retired on 28th March, 1999. Referring to a letter dated 22nd July, 1999 written by the Firm to the Bank, he points out that the said letter was also co-signed by the Petitioner here which obviously meant that she had not retired as a partner even as on that date. He, Therefore, disputes the assertion that the Petitioner retired as a partner of the firm. He submits that in any event this is a disputed question which cannot be gone into at this stage but only at the trial. Referring to the judgment dated 28th August, 2006 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Application No. 15 of 2005 titled Smt. Sunita Vijay Deshpande v. Shri Romesh Bansilal Gandhi and Ors. he submits that the similar plea made by the Petitioner here before the High Court of Bombay at Nagpur in relation to some other cheque, was rejected by the High Court on the ground that the question of retirement of the Petitioner from the partnership firm was itself is a disputed

question of fact. Finally, it is submitted that the provisions of Indian Partnership Act 1932 indicate that the partners are jointly and severally liable for the acts of the firm and that since the Petitioner was a partner of the firm, that was by itself sufficient for the liability u/s 138 NI Act to attach to the Petitioner.

8. Explanation (a) to Section 141 NI Act states that for the purposes of that Section, a company would include "the firm or other association". Therefore, where the accused is a firm, the word "company" in Section 141 NI Act has to be read as a "Firm". Consequently, if apart from the firm, a person is also sought to be made liable by being arrayed as an accused then the complaint will have to aver that such person was at the time of the commission of the offence, "in charge of and responsible to" the firm for the conduct of its business.

9. The law relating to the minimum averments to be contained in a complaint filed u/s 138 NI Act against a company and its directors is fairly well settled. In relation to a company, the judgment of the Hon'ble Supreme Court in *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another*, , holds the field. That judgment refers to an earlier judgment of the Supreme Court in *Monaben Ketanbhai Shah and Another Vs. State of Gujarat and Others*, which specifically discusses the situation in the case where a firm is an accused in a complaint u/s 138 NI Act. The Supreme Court has explained the law in the following words in *Monaben Ketanbhai Shah* (SCC, p.18):

6. The criminal liability has been fastened on those who at the time of the commission of the offence, were in charge of and were responsible to the firm for the conduct of the business of the firm. These may be sleeping partners who are not required to take any part in the business of the firm; they may be ladies and others who may not know anything about the business of the firm. The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact. The present case is of total absence of requisite averments in the complainant.

10. The law, Therefore, is that it is not enough that the complaint in which the firm and the individual partners are shown as accused to merely state that such person is a partner of the firm. The complaint would necessarily have to contain an averment that such partner was in charge of and responsible to the firm for the conduct of its business at the time of commission of offence. Short of such averment, the complaint would not meet the minimal requirement of the law as explained by the Supreme Court.

11. Turning to the present complaint, the only averment vis-à-vis the Petitioner

here is that she was a partner of the firm along with one Dr. I. Sheikh. There is no averment that at the time of commission of the offence the Petitioner was in charge of and responsible to the firm for the conduct of its business. On this short ground, the Petitioner is entitled to succeed. The learned MM could not have taken the cognizance of the offence vis-?-vis the Petitioner given the fact that the minimum requisite averments connecting the Petitioner with the offences complained of, is absent in the complaint.

12. In view of the above conclusion, there is no need for this Court to go into the question whether the Petitioner had in fact retired from the firm. The judgment of the Bombay High Court referred to in para 7 above did not address the question of the minimum averment in the complaint as mandated by law and as explained in the judgment in Monaben Ketanbhai Shah.

13. For the aforementioned reasons, the petition is allowed, the impugned order dated 4th December, 2004 passed by the learned ASJ and the consequential order dated 25th February, 2005 passed by the learned MM in Criminal Complaint case No. 155/01 titled Mithanlal Marketing Limited v. Medifix Packaging Industries and Ors. is hereby quashed as far as the Petitioner is concerned.

14. A copy of the order be given dusty to the counsel for the parties.