
(2001) 04 MAD CK 0094

In the Madras High Court

Case No : Criminal O.P. No's. 16360, 16361 and 16362 of 1999 and Criminal M.P. No's. 7953 to 7958 of 1999

Techno Futura International Ltd. and Others

APPELLANT

Vs

T.S. Anthony Samy and Another

RESPONDENT

Date of Decision : 12-04-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 118, 138, 139, 141

Citation : (2001) 107 CompCas 600

Hon'ble Judges : B. Akbar Basha Khadiri, J

Bench : Single Bench

Advocate : A. Balaguru Nallathambi, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

B. Akbar Basha Khadiri, J.—All the three criminal original petitions have arisen in this way :

The respondent herein instituted criminal proceedings by way of filing private complaints in C.C. Nos. 6979 of 1999, 6988 of 1999 and 7049 of 1999 u/s 200 of the Code of Criminal Procedure, 1973, alleging that the petitioners herein have committed offences under Sections 138 and 141 of the Negotiable Instruments Act. The first petitioner herein is the company, the second petitioner is the managing director and petitioner Nos. 5 to 8 are the directors of the company. The first petitioner-company borrowed Rs. 10,00,000 from the respondent for their business purpose and the second petitioner in his capacity as managing director issued thrice cheques dated May 18, 1999, May 25, 1999, and June 1, 1999 (C.C. No. 6979 of 1999), June 8, 1999, June 15, 1999, and June 22, 1999 (C.C. No. 6988 of 1999) June 29, 1999. July 6, 1999, July 13, 1999 (C.C. No. 7049 of 1999) each of the value of Rs. 1 lakh. When the cheques were presented for collection through the respondent's Bank, viz., Central Bank of India, Nungambakkam, Chennai-54, the cheques were returned with an endorsement

"insufficient funds". The respondent/complainant issued statutory notice dated July 22, 1999, in C. C. No. 6979 of 1999 and C.C. No. 6988 of 1999 and on July 25, 1999, in C.C. No. 7049 of 1999. But the amount was not forthcoming. Hence, after expiry of the statutory period, the respondent has instituted the aforesaid criminal proceedings.

2. Now, the petitioners/accused have come forward with the instant criminal original petitions to quash the proceedings in the respective calendar cases on the following grounds:

(i) According to the petitioners for and on behalf of the company, blank cheques were issued as security for certain loans and the loans were cleared, but the blank cheques had not been returned and, therefore, there is no legally enforceable debt or liability to attract the provisions of Section 158 of the Negotiable Instruments Act.

(ii) Petitioner Nos, 6, 7 and 8 have already resigned from the directorship of the company even before the cheques were issued. As soon as the notice was received from the respondent/complainant demanding payment, petitioners Nos. 6, 7 and 8 have given a reply statement stating that they have ceased to be the directors of the company even before the cheques were issued.

(iii) The liability should be fixed only to such person on whose negligence the offence has been committed. The third petitioner is the administrative director, Petitioner Nos. 4 and 5 are not the persons who issued the cheque and, therefore, they are not the necessary parties.

(iv) Petitioner Nos. 5 to 8 have not consented or connived with the second petitioner for the commission of offence and, therefore, the respondent/complainant cannot proceed against these petitioners.

(v) Lastly, it was contended that the second petitioner, the managing director of the company, is aged about 70 years. He has stayed away from the company affairs and, therefore, he cannot be proceeded against.

(vi) It is further contended that petitioner Nos. 4 and 5 are only the directors who have not involved in the affairs of the company and, therefore, they cannot be proceeded against.

3. Heard both the sides. At the outset, it should be pointed out that in *Delhi Municipality v. Ram Kishan* (1983) Cri. LI 159, the Apex Court have laid down certain norms which are to be taken into consideration while dealing with petitions u/s 482 of the Criminal Procedure Code. Their Lordships of the Apex Court have clearly laid down the guidelines which should be followed while dealing with proceedings of this sort. Their Lordships have pointed out that Section 482 of the Criminal Procedure Code regulates the inherent power of the Court to pass orders necessary in order to prevent the abuse of the process of the Court, that the High Court alone has independent power to pass orders *ex debito justitiae* in cases where grave and substantial injustice has been done or

where the process of the Code has been seriously abused. It has also been observed that the power being an extraordinary one, it has to be exercised sparingly. Referring to an earlier decision rendered in *Dr. Sharda Prasad Sinha Vs. State of Bihar*, : where the allegation set out in the complaint or the charge did not constitute any offence, Their Lordships have observed that it is competent to the High Court exercising its inherent jurisdiction u/s 482 of the Criminal Procedure Code to quash the order passed by the Magistrate, taking cognizance of the offence. It has also been pointed out that the proceedings against an accused in the initial stage can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is, taking the allegations and the complaint as they are without adding or subtracting anything, if no offence is made out, then the High Court will be justified in quashing the proceedings in exercise of its powers u/s 482 of the Criminal Procedure Code.

4. The first point submitted by learned Counsel for the petitioners is that the cheques were issued as blank cheques as security for the debt, and the loan was cleared, but the blank cheques were not returned. In other words, there is no legally enforceable debt or liability to attract offence u/s 138 of the Negotiable Instruments Act. In support of such contention, learned Counsel for the petitioners cited a decision reported in *K. Krishan Bai v. Arti Press*, I (1992) BC 361= (1991) LW (CrL.) 513, where Padmini Jesudurai J. has observed so.

5. The question whether a legally enforceable debtor liability exists, cannot be gone into in quash proceedings. In *K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another*, Their Lordships of the Apex Court have pointed out that when the signature in the cheque is admitted to be that of the accused, as per the presumption envisaged in Section 118 of the Negotiable Instruments Act it can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Their Lordships have also pointed out that Section 139 of the Negotiable Instruments Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability, and that the burden was on the accused to rebut the aforesaid presumption. By virtue of the provisions of Sections 118 and 139 of the Negotiable Instruments Act, there is a presumption that the cheque is supported by consideration. If the petitioners are to plead that it was not supported by consideration, but only issued as a security, then it is for them to establish so before the Trial Court by letting in adequate evidence. This aspect cannot be gone into by this Court at this stage. Therefore, whether or not the cheques were issued as blank cheques and the debt was discharged ought to be gone into at the time of the trial by the learned Trial Court and those aspects cannot be considered now.

6. Regarding the second aspect, it is the contention of learned Counsel for the petitioners that petitioner Nos. 6, 7 and 8 have resigned from the directorship and they ceased to be the directors from July 29, 1999, April 15, 1999, and April 15, 1999, respectively. In support of such contention, the petitioners have

produced Form No. 32 kept at the office of the Registrar of Companies showing that they have ceased to be so. In *Rajesh Bajaj Vs. State NCT of Delhi and Others*, : the Apex Court has held that in a petition u/s 482 of the Criminal Procedure Code it is not permissible to adopt a strictly hyper-technical approach and "sieve the complaint through a colander of finest gauzes for testing the ingredients" of the offence alleged against the accused, and that as to whether the person in question was really in charge of the affairs of the company and was responsible to the affairs of the company or not, and as to what functions, he was assigned in the affairs of the company and whether those functions could be considered sufficient to hold that he was in charge of the affairs of the company are matters which have to be gone into during the trial. The same view has been expressed by the Andhra Pradesh High Court in *K. Pannir Selvam v. MM. T.C. Ltd.*, II (2000) BC 354 =2000(2) Cri 354 wherein it was held that minute dissection of statement in complaint could not be undertaken in quashing proceedings. The Andhra Pradesh High Court was of the view that when a plea was raised that the accused ceased to be a director, it is a matter to be decided during the trial. It, therefore, follows that this aspect has to be gone into at the time of the trial.

7. The third objection is that the cheques have been issued by the second petitioner, who is the managing director and petitioner Nos. 3 to 8 have not consented or connived with him for commission of offence. Section 141 of the Negotiable Instruments Act recites as under:

"141. Offences by companies.--(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.

Explanation.--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."

In the recent decision reported in *Anil Hada Vs. Indian Acrylic Limited*, : the Apex Court has indicated the category of persons who can be brought within the purview of penal liability. The Apex Court has observed as under in paragraph No. 10 (page 40) :

"Three categories of persons can be discerned from the said provision who are brought within the purview of the penal liability through the legal fiction envisaged in the section. They are: (1) The company which committed the offence. (2) Everyone who was in charge of and was responsible for the business of the company, (3) 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."

8. In the complaint, the respondent/complainant had clearly pleaded that petitioners Nos. 3 to 8 were responsible for the conduct of the business of the first petitioner-company. In view of the decision rendered by the Apex Court in *Rajesh Bajaj v. State NCT of Delhi*, (supra), this Court need not go into the aspect whether petitioner Nos. 3 to 8 consented or connived with the managing director to commit the offence. That has to be considered by the Trial Court at the time of trial. The fifth contention raised by the petitioners also falls to the ground.

9. The next contention is that the second petitioner was the managing director, who is aged 70 years and he stayed away from the company affairs. As pointed out by Their Lordships of the Apex Court in *Anil Hada v. Indian Acrylic Ltd.*, (supra), the effect of reading Section 141 of the Negotiable Instruments Act is that when the company is the drawer of the cheque such company has no body, soul and flesh and it has to be represented by some human machinery. In the instant case, the drawer of the cheque being the second petitioner, who was the then managing director, he is presumably liable. The question whether he stayed away from the affairs of the company presently, has to be gone into at the time of the trial. I consider, on that score also the petitioners cannot seek to quash the proceedings.

10. I feel, all the points raised by the petitioners are to be gone into at the time of the trial by the Trial Court and they may not constitute grounds for quashing the proceedings. Accordingly, all the three criminal original petitioners are dismissed. Consequently, Crl.M.P. Nos. 7953 to 7958 of 1999 are also dismissed.