
(2009) 10 MAD CK 0332

In the Madras High Court

Case No : Criminal OP No's. 19567 to 19570 of 2005 and Criminal MP. No's. 5721, 5720, 5722 and 5723 of 2005

T.R. Gopalakrishnan

APPELLANT

Vs

Rajkumar Jain, Proprietor R.K. Investments, by Power Agent
T. Bhuvaramurthy

RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 141(2)

Citation : (2010) 1 LW(Cri) 112

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : K. Bijai sundar, for the Appellant;

Final Decision : Allowed

Judgement

Aruna Jagadeesan, J.—In all these Criminal Original Petitions, the 3rd accused in CC. Nos. 2107, 12451, 12609 and 11603/2004 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai-1 is the Petitioner herein facing criminal Prosecution for the offence under Sections 138 and 141 of the Negotiable Instruments Act (herein after referred to as the Act).

2. In the complaint, it is alleged that the Petitioner is the Director of the Company by name M/s. Southern Shipping Corporation Pvt Limited/A1 and amounts were borrowed by the said Company through A2 Balasubramaniam, the Managing Director of the said Company. One T.S. Raman/A4, an authorised signatory of the said Company executed promissory notes in favour of several financiers, who had in turn endorsed the same in favour of the Respondent/complainant and the 4th accused T.S. Raman had issued cheques on behalf of the Company towards discharge of the debt and the said cheques were dishonoured which were sent for collection for the reason "exceeds arrangement and funds insufficient". A statutory notice dated 4.9.2004 was sent to all the parties including the Petitioner and a suitable reply dated 15.9.2004 was issued

by the Petitioner/3rd accused and since payment was not made in spite of the legal notice, the Respondent/complainant alleged that the Petitioner has committed an offence u/s 138 of the Negotiable Instruments Act and is liable to be punished u/s 141 of the said Act.

3. Mr. K. Bijai Sundar, the learned Counsel for the Petitioner submitted that the Petitioner retired from the Company as its General Manager in August 2002 itself i.e. one year prior to the above said transactions and hence, the averment that the Petitioner is the Director of the Company is totally incorrect and further no averment has been made in so far as the Petitioner is concerned that he was in charge of conduct of the business of the Company and merely stating that he is a Director will not make him liable for the offence committed by the Company.

4. A bare perusal of the complaint petitions demonstrate that the statutory requirements contained in Section 141 of the Act had not been complied with. It may be true that it is not necessary for the complainant to specifically reproduce the wordings of the Section, but what is required is a clear statement of fact, so as to enable the court to arrive at a prima facie opinion that the Petitioner is vicariously liable.

5. Section 141 raises a legal fiction. By reason of the said provision, a person, although is not personally liable for commission of such an offence, would be vicariously liable therefor. Such a vicarious liability can be inferred, in so far as a Company registered or incorporated under the Companies Act, 1956 is concerned, only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the Company. Before a person can be made vicariously liable, strict compliance with the statutory requirements would be insisted. The averments made in paragraph 3 of the complaint petitions do not meet the said statutory requirements and the Petitioner has retired as the General Manager of the said Company long before the issuance of the cheque by the Company. The complaint does not even contain any statement that the Petitioner was in charge of the business of the Company at the relevant point of time.

6. The Honourable Supreme Court in the case of *Monaben Ketanbhai Shah and Another Vs. State of Gujarat and Others*, has held as under:

6. From the above, it is evident that in the complaint there are no averments against the Appellants except stating in the title that they are partners of the firm. Learned Counsel for the Respondent complainants contended that a copy of the partnership deed was also filed which would show that the Appellants were active in the business. No such document was filed with the complaint or made part thereof. The filing of the partnership deed later is of no consequence for determining the point in issue. Section 141 does not make all partners liable for the offence. 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 lathes 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 complaint.

7. Yet again in the case *Smt. Katta Sujatha Vs. Fertilizers and Chem. Travancore Ltd. and Another*, , the Honourable Supreme Court has held as under:

However, one thing is clear that the Appellant was in no way involved in any of the transactions referred to in the complaint and it was not stated that she was in charge of the business and was responsible for the conduct of the business of the firm in terms of Section 141 of the Act nor was there any other allegation made against the Appellant that she had connived with any other partner in the matter of issue of cheque.

8. The question has been set at rest by a three Bench of the Honourable Supreme Court in the case of *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another*, , wherein the law has been laid down in the following terms:

19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint u/s 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable u/s 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its

business. When that is so, holders of such positions in a company become liable u/s 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered u/s 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under Sub-section (2) of Section 141.

9. As the law laid down in the aforementioned decisions is clearly attracted in the instant case, I am of the considered view that the criminal Prosecution against the Petitioner cannot be sustained, which is liable to be set aside.

10. In the result, these Criminal Original Petitions are allowed and the proceedings in CC. Nos. 12107, 12451, 12609 and 11603/2004 and the process issued by the court below are hereby quashed. No costs. Consequently, the connected M Ps are closed.