**(2000) 10 AP CK 0044**

**In the Andhra Pradesh High Court**

**Case No :** Criminal Petition No. 3483 of 2000

Trichur Cotton Mills Ltd. and Another — APPELLANT

Vs

Devarasetty Cotton and Another — RESPONDENT

**Date of Decision :** 17-10-2000

**Acts Referred:**

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

**Citation :** (2003) 115 CompCas 168 : (2001) 1 RCR(Criminal) 828

**Hon'ble Judges :** Vaman Rao, J

**Bench :** Single Bench

**Advocate :** Pratap Narayan Sanghi, for the Appellant; Public Prosecutor, for the Respondent

## Judgement

Vaman Rao, J.—This petition u/s 482 of the Criminal Procedure Code, 1973, seeks to quash the proceedings in C. C. No. 136 of 2000 on the file of the Judicial First Class Magistrate, Jammalamadugu, in which the petitioners herein are sought to be prosecuted for offence u/s 138 of Negotiable Instruments Act, 1881. /

2. The contention of learned counsel for the petitioners is that inasmuch as the offence is said to have been committed by the first petitioner-company, there are no sufficient allegations in the complaint to fasten the criminal liability on the second petitioner (A-2) to bring the matter within the purview of Section 141 of the said Act. As there is no specific allegation in the complaint that the second petitioner is in charge of and responsible for the business of the company, it is argued that in the absence of such an allegation, criminal liability cannot be attributed to the second petitioner for the offence said to have been committed by the company, accused No. 1 herein. /

3. It is true that there is no specific allegation in the complaint that A-2 is in charge of and responsible for the business of the company and admittedly the cheque itself was issued by accused Nos. 3 and 4 and not by A-2 (second

 

petitioner herein). Whether a person connected with a firm was in charge of and responsible for the affairs of the company is a question of fact. Learned counsel for the petitioners, however, contends that the absence of a specific allegation that the second petitioner was in charge of and responsible to the company for the conduct of business of the company as contemplated u/s 141 is fatal to the maintenance of the complaint and the proceedings, under these circumstances, have to be quashed. In support of his contention, he relies on the judgment of this court reported in G.L. Modi and another Vs. Xedd Finance and Investments Pvt., Ltd. and others, . Learned counsel more particularly relies on the observation in para. 13 of the said judgment, which is extracted below : /

"In the instant case, admittedly the cheques were issued by the managing director of the first accused company and in both the complaints, there are no specific allegations that these petitioners were in charge of and responsible for the conduct of the business of the company at the time of alleged commission of offence. It is common knowledge that in a company or firm there may be sleeping partners or directors who are admitted for the benefits only and they have not taken any interest or participate in the day-to-day business of the firm or company and they cannot be made liable for the offences committed by the managing partner or managing director. There may be civil liability on their part, but they should not be prosecuted for criminal offences. Hence, the proceedings against these petitioners are liable to be quashed."

4. These observations would indicate that in that case the directors other than the managing director were sought to be prosecuted in respect of bouncing of a cheque issued by the managing director. Coupled with this, there were no allegations that the said directors were in charge of and responsible to the company for the business of the company. Thus, the judgment rests on the footing that the prosecutions in respect of persons, who were described as mere directors, the complaint could not be maintained in the absence of specific allegation that they were in charge of and responsible to the company for the business of the company. In the case on hand, the second petitioner (A-2) has been specifically described as the managing director of the company. In fact, it is not disputed that he is the managing director of the company. Prima facie, a managing director of the company by nature of the very designation is presumed to be in charge of and responsible to the company for the business of the company. The principle and the basis of the decision in the judgment cited by learned counsel is not applicable to this case inasmuch as the accused sought to be prosecuted in that case were mere directors and were not described as managing directors. When a managing director is sought to be prosecuted, in view of the presumption arising from his status of managing director, the absence of a specific allegation as contemplated u/s 141 cannot be considered significant. Where a person is designated as the managing director of a company, it is implicit that he is in charge of and responsible to the company for its business affairs. It is necessary to make a distinction between the managing director and other directors. In respect of other directors, they may or may not

 

be in charge of and responsible to the company for the business affairs. Some directors may be in charge of and responsible to the business of the company, some may be merely sleeping directors. /

5. Thus, the proceedings against the second petitioner cannot be quashed on the ground of absence of a specific allegation as contemplated u/s 141 of the said Act for the reason that he is shown to be the managing director of the company, which raises an initial presumption that he is in charge of and responsible for the business of the company. However, as stated above, it is a question of fact and it is open to the second petitioner to show that he was really not in charge of and responsible to the company for its business. /

6. As, far as the first petitioner is concerned, learned counsel for the petitioners fairly concedes that the first petitioner being a company, he does not press for quashing of the proceedings. /

7. Under these circumstances, there are no grounds for quashing the proceedings u/s 482 of the Criminal Procedure Code. The petition is, accordingly, dismissed. /

8. Learned counsel for the petitioners, however, submits that the first petitioner-company is located in Kerala and the second petitioner is also a resident of Kerala and that if he is required to attend the court every day, it may cause hardship to the petitioners. It is open to the petitioners to move an application before the magistrate for dispensing with personal attendance of the petitioners and for seeking permission to be represented by some other person or their advocate. On such application being filed, the learned magistrate shall allow the same with appropriate conditions that he deems proper. /

 