(2000) 10 AP CK 0034

In the Andhra Pradesh High Court

Case No : Criminal P 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 141

Citation : (2001) 2 ALD 732 : (2001) 1 ALD(Cri) 5 : (2001) 1 ALT(Cri) 34

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

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

Judgement

1. This petition u/s 482 Cr.PC seeks to quash the proceedings in CC 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.

2. The contention of the learned Counsel for the petitioners is that inasmuch as the offence is said to have been committed by the 1st petitioner-Company, there are no sufficient allegations in the complaint to fasten the criminal liability on the 2nd petitioner (A2) 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 2nd petitioner is incharge of and responsible to the business of the Company, it is argued that in the absence of such an allegation, criminal liability cannot be attributed to the 2nd 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 A2 is incharge of and responsible to the business of the Company and admittedly the cheque itself was issued by accused Nos.3 and 4 and not by A2 (2nd petitioner herein). Whether a person connected with a firm was incharge of and responsible

to the affairs of the Company is a question of fact. The learned Counsel for the petitioners, however, contends that absence of specific allegation that the 2nd petitioner was incharge 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, . The 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 1st accused-company and in both the complaints, there are no specific allegation that these petitioners were incharge 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 arc admitted for the benefits only and they are 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 presented 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 Directors. Coupled with this, there were no allegations that the said Director were incharge of and responsible to the Company for the business of the Company. Thus, the Judgment rests on the footing that the prosecution 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 incharge of and responsible to the Company for the business of the Company. In the case on hand, the 2nd petitioner (A2) 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 incharge 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 the 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 presumption arising from his status of Managing Director, absence of specific allegation as contemplated u/s 141 cannot be considered significant. Where a person is designated as Managing Director of a Company, it is implicit that he is incharge 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 incharge of and responsible to the Company of the business affairs. Some Directors may be

incharge of and responsible to the business of the company, some may be merely sleeping Directors.

5. Thus, the proceedings against the 2nd petitioner cannot be quashed on the ground of absence of 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 incharge of and responsible to the business of the Company. However, as stated above, it is a question of fact and it is open to the 2nd petitioner to show that he was really not incharge of and responsible to the Company for its business.

6. As far as the 1st petitioner is concerned, the learned Counsel for the petitioners fairly concedes that the 1st 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 Cr.PC. The petition is, accordingly, dismissed.

8. The learned Counsel for the petitioners, however, submits that the 1st petitioner Company is located in Kerala and the 2nd 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.