

(2001) 04 KAR CK 0009
In the Karnataka High Court
Case No : Criminal Petition No. 1103 of 2000

Uma Gangadhar

APPELLANT

Vs

Classic Coffee and Spices Private Limited, Chickmagalur

RESPONDENT

Date of Decision : 17-04-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2001) 6 KarLJ 193

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : N. Dinesh Rao, for the Appellant; B. Anand, for the Respondent

Judgement

1. The petition filed u/s 482 of the Criminal Procedure Code for quashing of the proceedings in C.C. No. 1530 of 1998 on the file of the Additional Munsiff and Judicial Magistrate First Class, Chickmagalur. The petitioner is the accused before the Trial Court. The respondent is a private limited company. The Assistant Manager of the respondent- Company launched the prosecution u/s 200 of the Cr. P.O. against the accused for committing an offence punishable u/s 138 of the Negotiable Instruments Act. The cognizance is taken and sworn statement is recorded. Amongst the documents marked at the stage of recording the sworn statement, Ex. P-I is the letter of authorisation given to the Assistant Manager by the Joint Managing Director authorising him to give evidence and produce the relevant documents on behalf of the company. In a sense, Ex. P-I purports to authorise to give evidence in the case before the Court. However, there is no authorisation for launching of prosecution. Ex. P-I is issued by way of ratification and subsequent to the institution of the complaint. The Magistrate took cognizance and issued process. The accused being aggrieved, filed a criminal revision petition before this Court in Criminal Revision Petition No. 670 of 1999. In the said petition, the same grounds were urged as in the present petition and relief of quashing the proceedings was sought. However, the date of the impugned order in the earlier criminal revision petition was shown as

28-6-1999. The relevant order sheet of the Trial Court pertaining to the date indicates that on the said date, an application was filed seeking exemption of the accused. That came to be rejected. In view of the inadvertent mistaken prayer in the relief, the revision was dismissed as not maintainable. Since the earlier revision is already dismissed, the present petition is filed invoking inherent powers of the Court.

2. The earlier criminal revision petition came to be dismissed on 6-3-2000. Already one year has elapsed. It would be too technical to dilate upon the technical aspects of maintainability of the petition or the revision in view of the aforesaid developments. A question is raised in the present petition that:

"Whether the prosecution launched by the Assistant Manager of the respondent-company is improper without proper authorisation by the company in the sense to be authorised by the Board of Directors?"

Therefore, sought for quashing of the proceedings.

3. The Counsel for the petitioner relied on the ruling of Andhra Pradesh High Court in Satish and Company Vs. S.R. Traders and Others, , wherein it is held thus:

"At this stage, I may also notice the other contention of the learned Counsel for the appellant herein that in the instant case, the Manager being an employee of the company is deemed to be authorised to file the complaint. But, according to me, the powers of the Manager are slightly different from that of the Managing , Director of company. A Managing Director may derive his powers from the Articles of Association directly or for certain other acts he may be authorised to do so, but in case of a Manager such powers may be traced either to his appointment order or to specific authorisation given to him regarding a particular aspect or aspects of the business. It is quite common that there are Purchase Managers, entitled to make only purchases and there are Sales Managers authorised only to sell the commodities etc. Therefore, on the basis of designation that one is a Manager, it cannot be inferred that he has all the powers of the firm or a company or any corporate body including the power to file the complaint. The designation "Manager" does not clothe a person with all the powers to file a suit and defend the suit or file a complaint for or on behalf of the company. In fact, dealing with a similar situation, the High Court of Madras in Sudesh Kumar Sharma v Setvamani, held that a person who is competent to file a complaint u/s 138 of the Act must be a payee or a holder in due course. It further held that by no stretch of imagination, a Manager of the company can be said to be a payee or a holder in due course. Therefore, unless there is a specific authorisation, a complaint filed by such Manager was incompetent. However, the learned Counsel for the appellant tried to distinguish that case by contending that in that case the complaint was filed by Selvamani in his individual capacity but not as a Manager though he described himself as a Manager. But, according to me, the facts of the case do not matter much for proper appreciation of the

principle of law that such a Manager should be an authorised person. Even if the cause title of the complaint describes the company as the complainant through the Manager, the point for consideration would be whether such a complaint is competent without such authorisation. According to me, even if the company is the complainant represented by its Manager, such Manager shall necessarily be an authorised Manager so that the Magistrate can take cognizance of the offence. Thus, in my humble opinion, the other decision of the High Court of Madras in *Gopalakrishna Trading Company v D. Baskara*], that a Manager is competent to institute complaint without any authorisation by the company cannot be taken as laying down correct law.

The next question that arises in this case is that even in such cases where proper authorisation letter or power of attorney was not filed, along with the complaint, whether the company can ratify such actions later or whether such authorisation letter can be filed later so as to regularise the irregular proceedings.

The learned Counsel for the appellant-complainant brought to my notice that in this case Ex. P-I, a letter, authorising the Manager to institute the proceedings was filed after one year and on that basis he submitted that the defect, if any, in filing the complaint stands cured and therefore, the complaint was properly instituted. I am afraid that this contention also cannot be accepted for more than one reason. If there was no proper authorisation as on the date of filing of the complaint, the Court could not have taken cognizance of the offence since it was not a proper complaint in terms of Section 142(a) of the Act.

The object of law in all such cases, that the complaint or suit shall be filed by a person duly authorised, is that, such proceedings will definitely have financial consequences on the company so as to bind the company for the actions of such persons. A company which suffered, a decree or order, at the hands of such a person who was not duly authorised, may repudiate the order and decree of a competent Court as not binding. Even in criminal cases an aggrieved person may also file a suit for malicious prosecution in case a false complaint was filed. Even in such cases also the company may take up a plea that it was not bound by the actions of a particular officer on the ground that he was not duly authorised in that behalf. Therefore, a principle has emerged that any legal proceedings whether criminal or civil shall be instituted by the company through its authorised officers, so as to bind the company. In this view of the matter, therefore, there shall be a proper initiation of the proceedings by filing a proper complaint so that the Court may take cognizance of the same and if the complaint, as filed was not maintainable as on the date of its filing, it was liable to be dismissed and subsequent ratification cannot revive it. For this principle, I am supported by a judgment of the High Court of Madras in *K.N. Sankaranarayanan and another Vs. Shree Consultations and Services Pvt. Ltd. and others*, . In that case, one of the Directors filed a petition for prevention of oppression and mismanagement on behalf of the company without the approval of the Board of Directors and on that basis it was contended that such a suit

instituted without the authority of the Board was incompetent. Negating the contention of the other side in that case, that subsequently, a letter of consent to file the petition under Sections 397 and 398 of the Companies Act was given, the Court held that any cause instituted without the authority makes it invalid from its inception and cannot be validated by a later ratification and accordingly the proceedings initiated by one of the Directors without the resolution of the company was dismissed as not maintainable. In this context, I further make it clear that in terms of Section 142 of the Negotiable Instruments Act, another duly authorised complaint could be filed in time i.e., within one month from the date of cause of action. In this view of the matter, Ex. P-I, a letter of authorisation filed after one year cannot be taken as a proper ratification of the action initiated by P.W. 1. Because if it is taken that on the date of Ex. P-I, letter (filed after one year), a duly constituted complaint is filed, it would be barred by limitation of one month prescribed by Section 142 of the Negotiable Instruments Act. Moreover nothing prevented the complainant to withdraw the complaint himself voluntarily and file another complaint with proper authorisation within the time permitted by Section 142 of the Act".

4. Per contra, the Counsel for the respondent relied on the ruling of the Bombay High Court in the case of M/s. Credential Financial Ltd. Vs. State of Maharashtra and others, , wherein it is held thus;

"Neither the Negotiable Instruments Act nor the Companies Act, 1956 imposes a pre-condition that there has to be an authorisation as per statutory provisions. When an artificial person like a Company has to file a complaint, it will be operated through one of its officials which may include even a Chairman or Managing Director. All that can be insisted upon is the existence of authorisation. In absence of it being a pre-condition, in the event of dispute, it will become a subject-matter of proof to be adduced at the time of trial. A Manager or the Managing Director ordinarily by the very nomenclature can be taken to be the person in charge of the affairs of the Company for its day-to-day management and within that activity would certainly be calling the act of approaching the Court either under civil law or criminal law for staying the trial in motion. It would be too technical and narrow, a view to take that in the body of the complaint the authorisation was not elaborated upon and along with documents annexed to the complaint the authorisation was not produced".

After going through the decisions cited at the bar and the material placed on record, I am in full agreement with the view of the Andhra Pradesh High Court. The decision in Mis. Satish and Company's case, supra, copiously deals with the legal position of launching of prosecution by the corporate personalities. The analogy from the provisions of CPC are also pertinently referred to in coming to the conclusion that in order to launch prosecution or any legal proceedings on behalf of the company, it is just and necessary that there should be a valid sanction and authorisation by the company. It may be by the recitals in the Memorandum of Association or Articles of Association and/or any special or

general authorisation granted by the board, a person can be empowered to launch the prosecution on behalf of the company. Merely by designation of a Manager it would be impermissible in law to launch the prosecution without a specific authorisation. Since the corporation being a legal entity has its own legal existence and it has legal privileges and accountabilities a company cannot be held responsible for the action of other persons who have acted without proper authorisation.

5. In the present case, the material produced disclose that the legal notice on behalf of thi company issued by Nagaraj who is designated as a Manager and the complaint is launched by Assistant Manager. Ex. P-I does not indicate that the Assistant Manager has been empowered to launch the prosecution. Ex. P-I only empowers Assistant Manager to give evidence in the Court and it is issued subsequent to the filing of the private complaint. There is no indication in Ex. P-I that at the time of filing of the complaint, there was proper authorisation to enable the Assistant Manager to file the complaint. In law it is necessary that for launching of a prosecution on behalf of the company, there should be necessary and proper authorisation for launching the prosecution right from the stage of filing of the complaint. In the absence of such authorisation prosecution launched would be bad in law and cannot be deemed to have been lawfully and validly launched by the company.

6. The Counsel for the respondent also referred to the definition of "Manager" under the Companies Act. It is defined thus:

"(24) "Manager" means an individual (not being the managing agent) who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a Director or any other person occupying the position of a Manager, by whatever name called, and whether under a contract of service or not".

On carefully going through the definition although the person is designated as a Manager has no independent power of functioning and he has to function under the superintendence, control and the direction of the Board of Directors. Therefore, the provisions of the Companies Act also does not enable a Manager to function independently without the instruction of the Board of Directors.

7. The Counsel for the respondent relied on the ruling of the Supreme Court in Associated Cement Co. Ltd. Vs. Keshvanand, , at para 25, it is held thus:

"Be that so, we suggest as a pragmatic position that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. There may be occasions when a different person can represent the company e.g., the particular person who represents the company at the first instance may either retire from the company"s services or may otherwise cease to associate therewith or he would be transferred to a distant place. In such

cases it would be practically difficult for the company to continue to make the same person represent the company in the Court. In any such eventuality it is open to the de jure complainant company to seek permission of the Court for sending any other person to represent the company in the Court. At any rate, absence of the complainant envisaged in Section 249 or 256 of the new Code would include absence of the corporeal person representing the incorporeal complainant".

The principle laid down in the above decision has no application to the facts of the present case. What is stated by the Supreme Court would mean that in prosecution or legal proceedings launched by anybody authorisedly representing the company at the inception, the same person need not continue to represent and at the volition of the company, the person to represent the company could be changed. Therefore, under the circumstances I am in full agreement with the views of the Andhra Pradesh High Court and I respectfully disagree with the view taken by the Bombay High Court cited at the Bar. Accordingly, the prosecution launched by the Assistant Manager in the absence of valid authorisation of company is bad in law and the proceedings before the Trial Court are quashed.