(2009) 07 MAD CK 0034

In the Madras High Court

Case No : Criminal OP. No. 27566 of 2006 and Cr.MP. No. 1 of 2006

V. Pushpa, V. Baskar Babu and V. Srinath, All Partners of Sri Kamatchi Amman Constructions	APPELLANT
Vs	
P. Arumugam	RESPONDENT

Date of Decision : 21-07-2009

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

Citation : (2009) 07 MAD CK 0034

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : G. Jeremiah, for the Appellant; S.N. Thangaraj, for the Respondent

Final Decision : Dismissed

Judgement

Aruna Jagadeesan, J.—The Petitioners, who are arrayed as A3 to A5, challenge the criminal proceedings in CC. No. 523/2005 on the file

of the learned Judicial Magistrate II, Udumalpet, initiated on the complaint launched by the Respondent u/s 138 of the Negotiable Instruments Act.

2. On a perusal of the complaint, it appears that the A1 the Sri Kamatchi Amman Construction (herein after referred to as the Company)

represented by one K.Venkatapathi had borrowed a sum of Rs. 15 lakhs for the purpose of his business and had issued a cheque bearing No.

323069 dated 15.9.2005 drawn on the State Bank of India, Salem and when the said cheque was presented for encashment on 19.9.2005 in his

Bankers, it was returned with an endorsement ""accounts closed"". The Respondent had issued a legal notice date 13.10.2005, which had been

received by the accused, but they failed to pay any amount and hence, the complaint has been filed.

3. It is averred in the complaint that A2 to A5 are the partners of the A1/ Company and in paragraph 12 of the complaint it is stated that they were

in charge and responsible for the conduct of the business of the said Company and hence, they are liable to proceeded with and punished

accordingly.

4. Mr. G. Jeremiah, the learned Counsel for the Petitioners submits that a plain reading of the allegations made in the complaint do not even prima

facie make out a case against the Petitioners and he further submits that it is not a case that the Petitioners herein have signed the cheque and only

A2 K. Venkatapathy, who had signed on behalf of the A1 Company and the Petitioners herein are sought to be prosecuted in view of the

provisions of Section 141 of the Negotiable Instruments Act on the ground that they are the partners of the said Company. He would further

submit that the 3rd Petitioner/A5 is no more a partner and he had resigned from the said Partnership Firm as early as on 01.4.2004 and produced

certified copy of Form-A filed under Rule 5 with the Registrar of Firms, wherein the 3rd Petitioner has not been shown as Partner.

5. On the other hand, Mr. S.N. Thangaraj, the learned Counsel for the Respondent contends that at the time of borrowal, all the Petitioners have

been partners and all of them were in charge and responsible for the conduct of the business of the Company and hence, they are liable to

proceeded with and punished accordingly.

6. From a perusal of complaint, it is seen that at paragraph 12 of the complaint it is stated that all the accused including the 3rd Petitioner/A5 was

in charge of the said Company and they have been looking after the day to day affairs of the Company. Further it is also averred that all the

accused for the business of the A1/Company received a sum of Rs. 15 lakhs from the Respondent and executed a promissory note.

7. Section 141 of the Negotiable Instruments Act stipulates that in a case where a Company committed an offence u/s 138 of the Negotiable

Instruments Act, then not only the Company but also every person, who at the time when the offence was committed, was in charge and was

responsible for the conduct of the business of the Company, shall be deemed to be guilty of the offence and liable to be prosecuted.

8. As already stated, there is no dispute in this case that the cheque was issued

by A1/Company and signed by A2. The Petitioners/A3 to A5 are

not the drawers of the said cheque. But, in the complaint, as there is a specific averment that the Petitioners along with the 2nd accused were

taking active part in the day to day affairs of the Company, it has to be seen as to whether the 3rd Petitioner was a partner at the time of issuance

of the cheque by the 2nd accused.

9. On a careful scrutiny of Form-A, it is seen that only the names of the three partners are mentioned and the name of the 3rd petitioner/A5 does

not find a place in the list of partners. There is no indication in the said document as to when he had resigned and from which date he was relieved

from the partnership Firm. An unregistered partnership deed is sought to be pressed into service by the Petitioners, which cannot be looked at this

stage, as it is not a registered document and no sanctity could be attached to the said document. That apart, the documents produced by the

accused cannot be looked into at this stage.

10. In the case of S.V. Muzumdar and Others Vs. Gujarat State Fertilizer Co. Ltd. and Another, , one of the Directors of the Company disputed

the responsibility fixed on him with respect to the conduct of the business of the Company and the Honourable Supreme Court has held as under:

8. ...Whether a person is in charge of or is responsible to the Company for conduct of the business is to be adjudicated on the basis of materials to

be placed by the parties. Sub-section (2) of Section 141 is a deeming provision which as noted supra operates in certain specified circumstances.

Whether the requirements for the application of the deeming provision exist or not is again a matter for adjudication during trial. Similarly, whether

the allegations contained are sufficient to attract culpability is a matter for adjudication at the trial.

11. In the complaint, there is specific averment that all the Petitioners were the partners of the A1 Company and they were responsible for the

conduct of the business of the Company and as such, they are liable to pay the amount. The questions as to whether the allegation made in the

complaint are true and whether the extract produced by the Petitioners in Form-A reflects the real state of affairs and whether the 3rd Petitioner is

not a partner from 1.4.2004 are to be gone into only when evidence in that regard is let in, which can come only at the stage of trial. Therefore, I am unable to accept the submissions made by the learned Counsel for the Petitioners.

12. In view of the reasons stated above, the submissions made by the learned Counsel for the Petitioners finds no acceptance with me and hence,

this Criminal Original Petition shall stand dismissed. Consequently, the connected MP is closed.

13. The learned Counsel for the Petitioners submitted that there is a difficulty for the Petitioners to appear before the court below on all the dates

of hearing and hence, their personal appearance may be dispensed with before the court below. Considering the said submissions, personal

appearance of the Petitioners before the learned Judicial Magistrate II, Udumalpet is dispensed with on condition that they shall appeal before the

court below as and when required and on further condition that they shall be represented before the court below by their Counsel regularly on all

the date of hearings.