

(2008) 01 BOM CK 0022

In the Bombay High Court

Case No : Criminal Application No. 244 of 2007

Vinod Hingorani

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

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

Citation : (2008) 6 ALLMR 885 : (2008) 4 BC 1 : (2009) 150 CompCas 602 :
(2008) CriLJ 2403 : (2008) 4 MhLj 705

Hon'ble Judges : V.K. Tahilramani, J

Bench : Single Bench

Advocate : Manish Bohra, instructed by A.S. Khan and Asso, for the Appellant;
M.H. Mhatre, APP, for the Respondent

Judgement

V.K. Tahilramani, J.—Heard the learned Advocate for the Applicant and the learned APP for the State. None appears for respondent No. 2, though served. Perused the reply of respondent No. 2.

2. This Application challenges an order passed by the learned Magistrate issuing process upon a complaint filed for the offences punishable u/s 138 of Negotiable Instruments Act. The complaint pertains to dishonour of cheques amounting to Rs. 35092/-. One cheque is of Rs. 35,000/- and the other cheque is of Rs. 92/- only. Admittedly, the applicant is not signatory to the cheque. The order issuing process was also challenged by the applicant in revision and the revision application was dismissed by Sessions Judge, Pune vide order dated 23rd February, 2006. Both these orders passed by the learned Magistrate as well as Sessions Judge are impugned in this application.

3. The learned Advocate appearing in support of this application contends that the applicant is original accused No. 4. He is arrayed because he was Director of accused No. 1 -Company. The applicant resigned from the company on 27th October, 2003. The cheques which were subject-matter of the complaint were issued on 8-4-2004 and 7-4-2004. Same were dishonoured on 13th & 10th April,

2004. Notice was issued on 7th May, 2004. In these circumstances and in the absence of necessary averments in the complaint viz., that applicant was responsible for conduct of business of company being absent in the complaint, as far as applicant is concerned, same does not disclose any offence much less punishable u/s 138 of the N.I. Act.

4. In support of his contention that the complaint must contain the averments which are essential, Mr. Bohra relies upon a decision of Supreme Court, reported in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, , and two decisions of this Court in the case of In Re: Megal Markus Pereira, and in the case of Skyline Aquatech Exports Ltd. and Ors. v. Sachima Agro Industries Pvt. Ltd. reported in 2007 ALL MR (Cri) 3314.

5. In the case of Skyline (supra) after considering various judgments including S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, ; K.P.G. Nair Vs. Jindal Menthol India Ltd., , Smt. Katta Sujatha Vs. Fertilizers and Chem. Travancore Ltd. and Another, , this Court has held that the necessary averments i.e. accused were in charge of or responsible to the company for the conduct of the business being absent, the complaint is liable to be quashed.

In the case of Skyline (supra) the averments in the complaint were as under:

again in para 21, the complainant reiterated that all the accused persons were in charge of and responsible for the conduct of the business of accused No. 1 and as such the accused Nos. 1 to 7 were guilty of having committed offences u/s 138 r/w Section 141 of the Act.

And in the case of In Re: Megal Markus Pereira, the averments in the complaint were as under:

2. That accused No. 1 is Public Limited Company. Accused Nos. 2 to 7 are its Directors. Accused Nos. 2 to 7 are all in charge of and responsible to the accused No. 1 for the conduct of the business and functioning of the accused No. 1. Their office addresses and residential addresses are as shown in the cause title.

6. The Supreme Court has rendered its decision in the case of S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, in the context of the phraseology of Section 141 of the N.I. Act. Section 141 deals with offences by companies. Whenever the person committing an offence u/s 138 is company then every person who at the time the offence was committed was in charge of and/or responsible to the company for the conduct of the business of the company as well as company shall be deemed to be guilty of the offences and shall be liable to be proceeded and punished accordingly. As to when an offence u/s 138 is committed is clear from a reading thereof. It is upon the cheque being returned "unpaid" by the bank. I have perused the complaint which is annexed to the present application at Exh. A. In the instant case, the complaint is completely silent about this material aspect. The complaint does not state that at the time when the cheque was returned unpaid/dishonoured, the applicant was in any

way in charge of and was responsible for the conduct of the business of the company or to the company. It is only thereupon that a prima facie conclusion can be drawn about the guilt of the person who issues a cheque on the touch stone of Section 141, in my view, as far as applicant is concerned, complaint cannot proceed, No offence is committed by the applicant when admittedly it is not shown that on the date of commission of offence, applicant was in charge of and responsible to or conducting business of the firm. Complaint, therefore, discloses no offence and allowing the same to proceed as far as applicant is concerned would be a clear abuse of the process of the Court. 7. Therefore, the complaint stands quashed as far as applicant is concerned. Application is disposed of accordingly.