(2006) 10 MP CK 0030

In the Madhya Pradesh High Court

Y.S. Bist APPELLANT

Vs

Steel Authority of India Ltd. and Others RESPONDENT

Date of Decision : 07-10-2006

Acts Referred:

COMPANIES ACT, 1956 — Section 292, 617
Criminal Procedure Code, 1973 (CrPC) — Section 200, 245
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (2007) 2 ALD(Cri) 25 : (2007) 2 BC 511 : (2007) ILR (MP) 708 : (2006) 4 MPLJ 586

Hon'ble Judges : Subhash Chandra Vyas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Vyas, J.

As common questions of law and fact are involved in all these six Misc. Criminal Case Nos. 739/06, 740/06, 750/06, 751/06, 752/06 and 753/06. therefore, they have been heard together and are being decided by this common order. The copy of this order be placed in the record of every case.

Petitioner Y.S. Bist is an accused No. 5 in six private complaints filed by respondent No. 1 in the Court of Judicial Magistrate First Class, Indore. Respondent No. 2 to 5 are other accused persons. It has been averred in the complaint filed by respondent No. 1 in all the six cases before Judicial Magistrate First Class, Indore, that petitioner herein is the General Manager (Plant) of M/s Bhanu Iron & Steel Co. Ltd., having its registered office at Hisar (Haryana), corporate office at New Delhi and works at Peethampur, District-Dhar, having its one office at 9-A, Manoramaganj, A. B. Road, Indore also. Accused No. 6 is the company incorporated under the Companies Act. Whereas the complainant is a Central Government''s Company, established within the meaning of Section 617 of the Companies Act, 1956. It has also been averred that accused No. 6 carries a business of manufacturing of steels plates and for the purpose of this business has been purchasing steel slabs from the complainant on credit basis. In Paragraph No. 9 of the complaint it has been mentioned that, in the discharge of existing debt/liability, accused No. 6 company issued six cheques drawn on Punjab & Sindh Bank, 13 P.Y. Road, Indore, with an assurance and undertaking that as and when cheques will be presented to their Bank the same will be honoured by them and sufficient amount will be kept in their Bank account for payment of cheque amount. Thereafter, cheques were presented by the complainant in the concerning Bank, but were returned unpaid, on the ground that account has been seized. Then written notices as per the requirement of Section 138 of Negotiable Instrument Act (hereinafter referred as the Act for the purpose of brevity) were issued to all accused persons including the petitioner herein. Such notices were also sent by fax. No payment was made within the period of 15 days from the date of receipt of notices. Thereafter, written complaints u/s 138 read with Section 141 of the Act were presented before concerning Magistrate. Learned Magistrate took cognizance of the offence against accused persons including petitioner herein and issued processes, after recording statement of the complainant u/s 200 of the Cr.P.C. Petitioner appeared before learned Magistrate and moved an application u/s 245 of Cr.P.C, for his discharge, which was rejected by that Court, therefore, now the proceedings pending in the Trial Court against petitioner herein have been challenged by way of these petitions.

Learned Counsel for the petitioner herein contended that petitioner is only an employee of accused No. 6 Company and is working on the post of General Manager (Plant). He has got no connection with the day to day affairs of the company. It has also been contended that no specific averments have been made against the petitioner herein in the complaint under Sections 138 and 141 of the Act showing that, the petitioner was in-charge of and responsible to the company for conduct of the business of the company.

Learned Counsel for the petitioner placed reliance on the latest pronouncement of the Supreme Court in the case of S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr. 4 (2005) BC 425 (SC) : 4 (2005) CCR 12 (SC) : 2006(1) MPJR 97, and argued that petitioner is neither Managing Director nor Joint Managing Director of the Company and, therefore, he is not covered under the provisions of Section 141 of the Act. It has also been argued that petitioner is not the signatory of the cheque, which was dishonoured and, therefore, his prosecution is only abuse of process of law.

Learned Counsel for the petitioner also placed reliance on the provisions of Section 292 of the Companies Act, 1956 and submitted that powers regarding borrowing money can only be exercised by Board of the Company by resolution, therefore, also petitioner is not responsible for any default in payment of money, for which cheques in question were issued by the company.

Per contra, learned Counsel for respondent No. 1 Company contended that petitioner is the General Manager (Plant) of respondent No. 5 Company, who is accused No. 6 in the complaint filed before Trial Court. He submitted that in Paragraph No. 5 of the complaint it has been clearly stated that "accused No. 5 is the General Manager (Plant) of accused No. 6 and is incharge and responsible to the conduct of the affairs of the business of the accused No. 6." Learned Counsel for respondent No. 1 Company further submitted that in addition to this averment in the statement of complainant Sanjay Agrawal recorded u/s 200 of the Code of Criminal Procedure also, it has been stated on oath by him that the petitioner herein is the General Manager (Plant) of respondent No. 5 and conduct the affairs of business of this company.

Learned Counsel for respondent No. I further submitted that in the notice issued to the petitioner under the provisions of Section 138 of the Act, it has been specifically stated that he is the incharge of and responsible for conduct of the business of respondent No. 5. The reply of the notice was sent by the company through the petitioner and in that reply this fact has not been controverted anywhere and, therefore, in absence of any controvertion on behalf of the petitioner this fact has become admitted between the parties.

Section 141 of the Act clearly provides that, when offence u/s 138 of the Act is committed by a company, then every person who, at the time the offence committed, was in-charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. A proviso has also been added in this Section, which provides that nothing contained in that Section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

It can very well be seen from the provisions of Section 141 of the Act itself that the criminal liability u/s 138 of the Act in case of company extends to every person, who at the time of offence was in-charge and was responsible to the company for the conduct of the business of the company and such person is vicariously liable to be held guilty for the offence punishable u/s 138 of the Act and punished accordingly.

The question of liability of any such person has been examined by the three judges Bench of Supreme Court in the case of S.M.S. Pharmaceuticals Ltd. (supra), and after referring decisions of various High Courts and earlier Judgments of Supreme Court on this subject it was ultimately held in Paragraph No. 20 that:

Paragraph No. 20 :-In view of the above discussion, our answers to the questions posed in the Reference are as under:

(a) It is necessary to specifically aver in a complaint u/s 141 that at the time of offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable u/s 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in affirmative, The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable u/s 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons arc in charge of and responsible for the conduct of business of the company. Therefore, they get covered u/s 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under Sub-section (2) of Section 141.

The law laid down by the Supreme Court has now become very clear on this subject and every person against whom necessary averments, which are essential requirements of Section 141 of the Act have been made in the complaint can very well be prosecuted along with the company under Sections 141 and 141 of the Act.

When we have examined the averments made in the complaint, in the notice sent by respondent No. 1 to petitioner herein and other accused persons, the reply sent by the petitioner and other accused persons through their Counsels and the statement given by the complainant before Trial Court u/s 200 of the Cr.P.C., then it becomes crystal clear that it has been specifically averred in the complaint that at the time, when the offence was committed, petitioner herein was in charge, and was responsible for the conduct of business of the company. In the notice sent under the provisions of Section 138 of the Act also such averments have been made, which have not been controverted by the petitioner herein and, therefore, there appears sufficient foundation laid for prosecution of the present petitioner.

The provisions of Section 292 of the Companies Act, 1956 are also of no avail to the petitioner herein, because in the same provision it has been provided that the Board of Directors of the company may, by a resolution passed at meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, a principal officer of the branch office, the powers specified in Clauses (c), (d) and (e) to the extent specified in such-Section (2), (3) and (4) respectively, on such conditions as the Board may prescribe. Clause (c) is regarding the power to borrow moneys otherwise than on debentures; Clause (d) is regarding power to invest the funds of the company, and Clause (e) is regarding the power to make loans and, therefore, any manager, or branch manager can also be delegated with powers of borrowing money otherwise than debentures. Whether there was any resolution in favour of the petitioner herein or not is a question of fact which is to be examined by the Trial Court. For the present looking to the averments made in the complaint and the statement given by the complainant u/s 200 of the Cr.P.C., it appears that prima facie petitioner herein is also guilty for the offence punishable under Sections 138 and 141 of the Act along with the company and, therefore, Trial Court has committed no mistake in proceeding against him.

In view of the above discussion these petitions have no merits and fail, therefore, they all arc dismissed.