

Sheeja Mol Vs. The State of Kerala represented by the Public Prosecutor and Others

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Court : Kerala

Decided On : Oct-28-2015

Judge : B. Kemal Pasha

Appeal No. : Crl. MC. No. 270 of 2014

Appellant : Sheeja Mol

Respondent : The State of Kerala represented by the Public Prosecutor and Others

Judgement :

1. In discharge of the liability of a partnership firm, its Managing Director, who is the first accused and 3rd respondent herein, has issued the cheque in question. The 2nd accused is another partner of the firm. Strangely enough, the partnership firm is not arraigned as the accused.

2. Normally, in case of civil liability, for suing a partnership firm, two or more partners can be sued within the meaning of Order XXX Rule 1 of the Code of Civil Procedure Code, 1908. At the same time, as far as the offence under Section 138 of the N.I. Act is concerned, in such a case, a complaint has to be filed under Section 142 of the N.I. Act, in conformity with Section 141(1) of the N.I. Act. Section 141(1) of the N.I. Act says:

If the person committing an offence under Section 138 is a company, every person who, at the time the offence was 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. (Emphasis Supplied)

3. Therefore, the persons responsible for the conduct of the Company, as well as the Company, should be the accused in the case. As per explanation(a) to Section 141(2) of the N.I.Act, 'Company' means any body corporate and includes a firm or other association of individuals.

4. When as per Section 141(1) of the N.I. Act, the company should be an accused, in cases wherein it is a Company, going by the explanation, in the case of a partnership firm, the firm should also be an accused in the case. As per explanation(b) to Section 141(2) of the N.I. Act, 'Director,' in relation to a firm, means a partner in the firm. Over and above the partners, who are responsible for the conduct of the business of the partnership firm, the partnership firm should also be a party to the complaint. When the partnership firm is not arraigned as an accused, the complaint fails and therefore, Annexure 1 complaint in C.C.No.290/13 on the file of the Judicial First Class Magistrate's Court-I, Thiruvananthapuram as against the petitioner, is liable to be quashed.

In the result, this CrI.M.C. is allowed and all further proceedings in Annexure 1 complaint in C.C.No.290/13 on the file of the Judicial First Class Magistrate's Court-I, Thiruvananthapuram, as against the petitioner, are hereby quashed.

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