

Ruchika Enterprises and ors. Vs. Shriram Enterprises

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Court : Mumbai

Decided On : Jul-10-2007

Reported in : I(2008)BC162

Judge : C.L. Pangarkar, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 131, 138, 141, 141(1) and 141(2); [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 482

Appeal No. : Cri. Appln. No. 1162 of 2007

Appellant : Ruchika Enterprises and ors.

Respondent : Shriram Enterprises

Advocate for Def. : S.V. Bhutade, Adv.

Advocate for Pet/Ap. : V.V. Bhangde, Adv.

Disposition : Petition dismissed

Judgement :

C.L. Pangarkar, J.

1. Rule. Returnable forthwith.

Heard finally with consent of parties.

2. This is an application under Section 482 of Criminal Procedure Code for quashing the proceedings under Section 138 of Negotiable Instruments Act before the Judicial Magistrate, First Class, Nagpur.

3. Petitioners are the accused before the Judicial Magistrate, First Class. Respondent instituted complaint under Section 138 of the Negotiable Instruments Act. Respondent is a partnership firm and deals in crushed coal powder and bricket coal and building material. Petitioner No. 1 is a partnership firm, Nos. 2 to 5 are its partners and Nos. 6 and 7 are the employees or authorised agents of the firm. All the petitioners are looking after the management and day-to-day business of the accused firm. As such all accused persons are acquainted with the transaction between the respondent and the petitioners. Respondent had supplied different quantity of coal powder and bricket coal from time-to-time to the petitioners on credit. Respondent maintains the account in regular course of business. The petitioners in partial discharge of their liability issued a cheque of Rs. 6,08,167.00 in favour of the respondent on 18.5.1999. The said cheque was signed by petitioner No. 3. The said cheque was sent to the Bank for collection. It was dishonoured on the ground that it exceeds arrangement. It is alleged that petitioners thereafter again issued two cheques on 7.6.1999 and 9.6.1999 for a total amount of Rs. 6,08,167.00. When these two cheques were signed by petitioner No. 3 and those cheques were handed over to the respondent, petitioner Nos. 3 and 6 personally and solemnly assured the respondent that those cheques would be honoured. When those cheques were sent to the Bank for collection these two cheques were also dishonoured for insufficient funds. Respondent, therefore, issued notice to the petitioners. In spite of the notice the petitioners failed to pay the amount. Hence the complaint came to be filed. The petitioners seek to quash this complaint.

4. Learned Counsel for the petitioners contended that all the partners of the firm are made accused in the complaint and particularly, though accused Nos. 6 and 7, have no concern with the firm they are also made party. He submitted that only those persons can be prosecuted who are responsible for the conduct of business. He also submitted that before anybody can be prosecuted as director or partner the complaint must contain the averments as mandated by Section 141 of the

Negotiable Instruments Act. Section 141 of the said Act reads thus:

Offences by companies-(1) If the person committing an offence under Section 131 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.

Provided that nothing contained in this sub-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:

Provided further that where a person is nominated as a Director of a Company by virtue of his holding any office or employment in the Central Government or State Government or a Financial Corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this chapter.

(2) Notwithstanding anything contained in Sub-section (1) where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer, shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

The Supreme Court while interpreting the provisions of Section 141 in *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr.* : 2005 CriLJ4140 , held as follows:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the 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 the question posed in Sub-para (b) has to be in the negative. Merely being a Director of a Company is not sufficient to make the person liable under Section 141 of the Act. A Director in a Company cannot be deemed to be in-charge of and responsible to the company for the 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

(c) The answer to question (c) has to be in the 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 the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the 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.

This decision has been rendered by the Supreme Court upon a reference made by the Division Bench of the Supreme Court. It is thus now decided by the Larger Bench of the Supreme Court that the complaint must contain an averment that at the time the offence was committed the person accused was in-charge or responsible for conduct of the business of the company (firm). If such averments are missing the complaint would not be maintainable. No liability obviously can be fastened on those who were not responsible for the conduct of the business.

5. Mr. Bhangde, learned Counsel for the applicants submitted that the complaint in this case does not disclose that all persons named in the complaint are responsible for conduct of business nor does it say that any particular person is responsible for the conduct of the business. He also submitted that all partners could not be said to be responsible for the conduct of the firm. He also submitted

that accused Nos. 6 and 7 are not even partners. Submission of Mr. Bhangde would be too general that all partners could not be said to be responsible for the conduct of the business. This statement as said earlier would be too general. There may be cases where all partners may be actively involved in the conduct of the business. Simply because there are 4 or 5 partners, it does not mean that all 4 and 5 are not responsible for the conduct of the business. It may be that the business may be so large that all partners may be required to actively participate in the conduct and day-to-day business of the firm.

6. Mr. Bhutad, learned Counsel submitted that this petition itself is misconceived, lie submitted that there are enough averments in the complaint to procure the requirement of Section 141 he took me through the complaint and particularly put stress on the following averments.

1. That the accused Nos. 2 to 5 are the partners and the accused No. 1 firm and the accused Nos. 6 and 7 are the employees and/or authorised agents/representatives of the accused No. 1 firm. All the accused Nos. 2 to 7 are managing and looking after the day-to-day business of the accused firm. As such the accused persons are well acquainted with the transaction between the complainant and the accused as also with the events leading to the instant complainant.

2. It is further submitted that in consideration of the sale as aforesaid and in partial, discharge of the liability of the accused persons, the accused No. 3, partner of accused No. 1 firm with the consent and connivance of the other accused, issued one cheque for Rs. 6,08,167/- (Rupees six lakh eight thousand one hundred and sixty-seven only) in favour of the complainant, bearing cheque No. 755373 dated 18.5.1999 drawn on Shikshak Sahakari Bank Ltd., New Itwari Road Branch, Nagpur.

3. At the time of issuing the said cheques the accused Nos. 3 and 6 personally and on behalf of all other accused, solemnly assured the complainant that the said cheques would be duly honoured by their bankers and further assured to make the requisite arrangements to ensure the payment of the said cheques.

4. It is submitted that the accused No. 3 under her signature, as a partner of the accused No. 1 firm and with the consent and connivance of the other accused issued the aforesaid cheques in consideration of the liability of the accused persons and in partial discharge thereof.

5. It is submitted that the accused Nos. 2 to 7 are managing the day-to-day affairs of the accused No. 1 Firm. Therefore, all the accused are jointly and severally liable.

These averments to my mind certainly fulfil requirement of Section 141 as well what has been laid down by the Supreme Court in the case cited above. The mandate of Supreme Court has already been narrated above. It is clearly contended by the complainant-respondent that all accused Nos. 2 to 7 are managing the day-to-day affairs of the firm. It is not simply averred by the complainant-respondent that accused Nos. 2 to 5 are partners, they are liable. Had this been the only averment then perhaps some weightage could be attached to the contention raised by Mr. Bhangde. Although accused Nos. 6 and 7 may not be partners it is specifically alleged that the accused Nos. 6 and 7 are also representatives, employees of the firm and are responsible for the day-to-day conduct of the business. Even though a person may not be a partner still he could be responsible for conduct of the business of firm. Hence even if the accused Nos. 6 and 7 may not be partners and since it is specifically alleged that they are also responsible for day-to-day business they could also be prosecuted by virtue of provisions contained in Section 141. If the allegations are examined on the touchstone of the law as laid down in the Supreme Court it must be held that they fulfil the condition as laid down. It would certainly be a matter of evidence as to which of the partners was and was not liable. What is required to be seen is whether there are enough of averments in the complaint or not. On that touchstone the complaint as filed is certainly maintainable.

7. I do not propose to go into the question of delay and laches in filing the petition since I do not find merit in the petition itself. Petition is accordingly dismissed.