

K.K. Chug Vs. State and ors.

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Court : Delhi

Decided On : Apr-22-1999

Reported in : 84(2000)DLT563; 2000(56)DRJ135

Judge : S.N. Kapoor, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 134, 141 and 141(1)

Appeal No. : Crl. M.(M) No. 2610 of 1998

Appellant : K.K. Chug

Respondent : State and ors.

Advocate for Def. : V.P. Dalmia, Adv.

Advocate for Pet/Ap. : J.L. Kalra, Adv

Disposition : Petition allowed

Judgement :

S.N. Kapoor, J.

1. Heard. In this case, only one short question arises for consideration: 'Whether the petitioner, Sh. K.K. Chug, simply being Director of M/s. K.K. Overseas (Pvt.) Ltd. could be prosecuted?'

2. The allegations made in para-2 of the complaint for offence under Section 138 of the Negotiable Instruments Act (hereinafter called the 'Act' for short) read as under:

'2. That the accused persons were in need of money in the month of July, 1995 and requested the complainant for a friendly loan of Rs. two Lacs for a period of three months and accordingly a cheque drawn on Oriental Bank of Commerce, Darya Ganj, Delhi for Rs. 2 lacs was issued by the complainant which was duly received and encased by the accused persons.'

3. The entire complaint does not indicate anywhere that the petitioner being Director at the time of commission of offence was in-charge and responsible to the company for the conduct of the business of the company. It is also not the case of the complainant that the petitioner has signed the loan documents. It is again not the case of the complainant that he has signed the cheques. In such circumstances, it is evident that since requirements of Section 141 of the Act as mentioned earlier have not been satisfied, the petitioner could not be prosecuted for offence under Section 138 read with Section 141 of the Act. Similar view has been taken in Mahendra Pratap Singh Ratra and Anr. v. N.K. Metals and Anr. : 75(1998)DLT155 and Prakash Industries Ltd. and Ors. v. Bajaj Auto Finance Ltd. 1998 (2) JCC 284. Not only this Court but other High Courts have also taken the view that it is for the complainant to allege as well as prove that the concerned Director of the company or a partner of the partnership firm was in charge and was responsible to the company for the conduct of its business at the relevant time. So long it is not alleged, the liability of under Section 141(1) of the Act cannot be made applicable to the petitioner. For the foregoing reasons I feel that the petition has to be allowed and it is allowed accordingly.