Sheeba Vs. State of Kerala and anr.

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SooperKanoon Citation : sooperkanoon.com/730455

Court : Kerala

Decided On : Jun-28-2005

Reported in : 2006(1)ALD(Cri)41; I(2006)BC419; [2006]132CompCas313(Ker)

Judge : K.P. Balachandran, J.

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

Appeal No. : Crl. M.C. No. 500 of 2003

Appellant : Sheeba

Respondent : State of Kerala and anr.

Advocate for Def. : M.A. Khadir Kunju, Public Prosecutor and; K.K.M. Sheriff, Adv.

Advocate for Pet/Ap. : Sreelekha Puthalath, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

K.P. Balachandran, J.

1. The third accused in C.C. 88 of 2002 on the file of Judicial First Class Magistrate's Court-II, Trichur has filed this petition under Section 482 of the Code of Criminal Procedure to have Annexure 2 complaint quashed. It is on the basis of Annexure 2 complaint that the Magistrate has taken cognizance of the offence under Section 138 of the Negotiable Instruments Act recording the sworn statement of the complainant/second respondent herein. The first respondent is the State, Accused Nos. 1 and 2 are not impleaded in this petition.

2. The case of the second respondent in Annexure 2 complaint in short is that in discharge of debt due from the first accused firm the second accused has issued Annexure I cheque drawn on the account maintained by the first accused firm at the Nagercoil branch of the Indian Overseas Bank signed by him on behalf of the first accused firm in his capacity as its Managing Partner, that it was so issued in the presence of the third petitioner/third accused who also is a Managing Partner of the firm and who along with A2 is managing the affairs of the business of the first accused firm, that on presentation of the cheque for encashment through his Bankers it was returned dishonoured on 15.2.2002 for want of sufficient funds in the account of the first accused firm to honour the said cheque; that thereupon notice was issued through lawyer on 1.3.2002 intimating of the dishonour and demanding payment of the amounts covered by the cheque; that the said notice was accepted by the accused on 8.3.2002 but they have neither paid up the amounts covered by the cheque nor have they issued any reply thereto till date and have thereby committed an offence punishable under Section 138 of the Negotiable Instruments Act.

3. The petitioner has no case that the complaint is bad for want of compliance with any of the statutory requirements for filing such a complaint or that the complaint is not filed within the time allowed, after the arising of the cause of action. There is also no case that the allegations in the complaint do not make out the ingredients of an offence punishable under Section 138 of the Negotiable Instruments Act or that allegations in the complaint even if proved on evidence would not make out a case for convictions for offence under Section 138 of the Negotiable Instruments Act. On the other hand it is her case that the allegations do not disclose an offence committed by her as the complainant has no case that she is involved in any

transaction with him or in the issuance of the cheque or that any debt or other liability is outstanding from her to the complainant.

4. The answer to the contentions advanced as aforesaid has to be found from an appreciation of the wording of Section 141 of the Negotiable Instruments Act. Section 141 of the Negotiable Instruments Act reads as follows:

141, Offences by companies--

(1) 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:

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. (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.

Explanation : For the purpose of this section--

(a) 'company' means any body corporate and includes a firm or other association of individuals; and

(b) 'director', in relation to a firm, means a partner in the firm.

5. In view to the explanation to Section 141, the provisions of Sections 141 (1) and (2) will have to be read for the purpose of this case substituting the word 'firm' for 'company' and 'partner' for 'director'. Consequently, therefore, on the facts of this

case inasmuch as the offence is alleged to have been committed by the first accused firm, every person who at the time the offence was committed was in charge of and was responsible to the firm for the conduct of its business as well as the firm shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished. Further by reason of Clause (2) of Section 141 of the Act if it is provided that the offence has been committed with the consent or connivance of any partner,, such partner shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. The proviso to Section 141(1) however enables exoneration from punishment of any such person on whom liability is attempted to be so cast under Section 141(1) 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.

6. In the instant case the stage has not come for the petitioner to seek to get exonerated, proving the conditions stated in the proviso and that can only be during the trial of the case. The allegations in the complaint show that the offence under Section 138 of the Negotiable Instruments Act was committed by the first accused firm; that the cheque in issue was signed on behalf of the firm by the second accused and that it was so done in the presence of the petitioner/third accused and that the petitioner/third accused and the second accused are the Managing Partners of the first accused firm and they are managing the affairs of the business of the first accused firm. No doubt, it is for the complainant to establish the allegations in the complaint. However, in view of the above allegations the complaint cannot be quashed at the threshold disabling the complainant to prove his case against the petitioner/third accused at trial.

7. Further it is worthwhile to note in this context the case of the petitioner in paragraph 3 of the statement of facts that she had sent a reply denying the allegations in the lawyer's notice issued on behalf of the complainant categorically denying her involvement in any transaction with the complainant. It is her further case in ground 'D' that she has come to understand that the Bank account on which the cheque is drawn is the personal account of the second accused and that first accused is a proprietary concern of the second accused. Apart from the above vague statements as to her understanding, there is no specific averment even in

the petition that she is not a partner with the second accused. Copy of the reply notice alleged to have been sent also is not produced though this is the second Criminal Miscellaneous Case filed withdrawing Crl.M.C. 11723 of 2002. The complaint and the sworn statement of the complainant show that the accused did not issue any reply to the notice.

8. The allegations in the complaint and the sworn statement has to be read as a whole to understand the specific case alleged. To test whether the statutory requirements to cast penal liability invoking Section 141 of the Act are there in the allegations, one has to see the substance of the allegations. Section 141 of the Negotiable Instruments Act embodies provision for casting penal liability inter alia on partners of firms, directors of companies, etc. in certain contingencies. To fulfil the requirements of Section 141 the allegations are not required to be in any particular form and no specific phraseology or language is required to be used in the allegations. It would suffice if necessary averments to cast such liability under Section 141 of the Act is spelt out from the allegations. It is apposite to quote the observations of the Apex Court in Monaben K. Shah v. State of Gujarat III (2005) BC 391 (SC) : III (2004) CCR 88 (SC) : 2004 (3) KLT 428 (SC), in paragraphs 4 and 6 on this aspect:

4. It is not necessary to reproduce the language of Section 141 verbatim in the complaint since the complaint is required to be read as a whole. If the substance of the allegations made in the complaint fulfil the requirements of Section 141, the complaint has to proceed and is required to be tried with. It is also true that in construing a complaint a hyper technical approach should not be adopted so as to quash the same....

6.. Section 141 does not make all partners liable for the offence. The criminal liability has been fastened on those who, at the time of the commission of the offence, were in charge of and were responsible to the firm for the conduct of the business of the firm. There may be sleeping partners who are not required to take any part in the business of the firm; they may be ladies and others who may not know anything about the business of the firm. The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact.

9. In Annexure Al complaint there are allegations sufficient enough to rope in the petitioner also in the commission of the offence. In case the allegations are proved on evidence and the petitioner not being able to bring her case within the proviso to Section 141(1) of the Negotiable Instruments Act, it would be a case for conviction of the petitioner as well, for offence under Section 138 of the Act.

10. The decisions in K.P.G. Nair v. Jindal Menthol India Ltd. : (2001)10SCC218 and Katta Sujatha v. Fertilizers and Chemicals Travancore Ltd. : (2002)7SCC655 , relied on by the Counsel for the petitioner has no application in the circumstances of this case to have the complaint against the petitioner being quashed. The decision in Devi v. Haridas : 2004(3)KLT355 , deals with a situation when cheque is issued by one of the joint account holders and the other account holder who has not signed a cheque was sought to be made liable for offence under Section 139 of the Negotiable Instruments Act and has no application to the facts of this case. Annexure 2 complaint in the above circumstances is not liable to be quashed even against the petitioner/third accused at the threshold.

This Crl.M.C. is devoid of merit and is dismissed. The Court below is directed to expedite the trial of the case which is three years old by now.

Communicate copy of order to the Court concerned forthwith.