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Court : Rajasthan

Decided On : Feb-13-2006

Reported in : I(2007)BC144; RLW2006(3)Raj2161; 2006(2)WLC544

Judge : Gopal Krishan Vyas, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 200 and 482; [Negotiable Instruments Act, 1881](#) - Sections 138 and 141

Appeal No. : S.B. Criminal Misc. Petition No. 109 of 2005

Appellant : Sunil Kumar

Respondent : Nahata Fabrics

Advocate for Def. : K.K. Shah, Adv.

Advocate for Pet/Ap. : N.M. Lodha, Adv.

Disposition : Petition allowed

Judgement :

Gopal Krishan Vyas, J.

1. By way of filing the present petition Under Section 482, Cr PC the petitioner agitates validity of the order dated 29.7.2002 passed by the Chief Judl. Magistrate, Pali taking cognizance of offence Under Section 138, [Negotiable Instruments Act,](#)

[1881](#) (in' short, 'the Act', hereinafter) against him as well as order dated 11.1.2005 passed by the Sessions Judge, Pali dismissing the revision petition filed by petitioner against order dated 29.7.2002.

2. The case set out by the petitioner is that as per complaint, disputed cheques which were dishonoured were signed by non- petitioner No. 3 on behalf of company (non-petitioner No. 2). It is submitted that perusal of the complaint filed by non-petitioner No. 1 and statement of the complainant recorded Under Section 200, Cr PC makes it clear that there is no allegation against the petitioner either that he has direct control over the management of the company or that he is working as incharge of the company. The petitioner is nominated to look after the interest of the loaner. It is submitted that neither the work order was given by the petitioner nor material was received by him and thus he has no liability for making the payments and as such cheques were not issued by him. In such circumstances, according to the petitioner, no action could be taken against him Under Section 138 of the Act.

3. It is contended by learned Counsel for the petitioner that the trial Court without considering the vital ingredients for making out case Under Section 138 against the petitioner has committed grave error in taking cognizance of offence against the petitioner. learned Counsel for the petitioner invited attention of the Court towards Section 141 of the Act and judgment rendered by the Supreme Court in the case of Monaben Ketanbhai Shah and Anr. v. State of Gujarat and Ors. reported in : 2004 CriLJ4249 . learned Counsel for the petitioner has also invited attention of the Court towards judgment of the Supreme Court in the case of S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr. 2005(2) WLC (SC) Criminal 490 : 2005(4) RLW 2386 (SC) in which, it is categorically held that where the allegations in complaint or charge-sheet do not constitute an offence the complaint is required to be dismissed. It is also held that in complaint there must be averments that at the time of the offence alleged the accused was in charge and responsible for the conduct of the business of the company and being Director of the company alone is not sufficient.

4. I have perused the orders under challenge. It is obvious from the order passed by the trial Court that there is only allegation that the petitioner is Director of the company. There is no specific allegation that he was in charge of the business of the company.

5. learned Counsel for the complainant non-petitioner, Mr. K.K. Shah submits that there is no dispute with regard to the position of law set down in the judgments of the Supreme Court; but, here in the instant case, both the Courts below have concurrently found facts against the petitioner and, therefore, no interference in the matter is called for.

6. Answering the reference in the case of S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr. (supra), their Lordships of the Supreme Court summed up the position as under:. there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability Under Section 141 is sought to be fastened victoriously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision.... A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141 he would issue the process... merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141.

7. Proceeding on the discussion of the matter On its vital aspects, their Lordships observed that the conclusion is inevitable that the liability arises on account of conduct, act or omission on the part of a person and not merely on account of holding an office or a position in a company. Therefore, In order to bring a case within Section 141 of the Act the complaint must disclose the necessary facts which make a person liable.

8. In view of the above, without there being any specific material on record for fastening the liability Under Section 141 of the Act against the petitioner, only on

the ground that the petitioner is director of the company, the order of cognizance passed by the trial Court qua the petitioner cannot be sustained. The author of the cheques in question is non-petitioner No. 3 on behalf of non-petitioner No. 2 and, therefore, the trial Court is free to proceed against them.

9. Consequently, the petition is allowed and order dated 29.7.2002 passed by the trial Court and order dated 11.1.2005 passed by the revisional Court, qua the petitioner, are set aside. The stay order granted by this Court earlier is vacated.

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