

Kareem Vs. Abbas

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Court : Chennai

Decided On : Apr-17-2001

Reported in : [2001]107CompCas273(Mad)

Judge : B. Akbar Basha Khadiri, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138 and 141

Appeal No. : Crl. O.P. No. 4533 of 1999 and Crl. M.P. Nos. 2187 and 2188 of 1999

Appellant : Kareem

Respondent : Abbas

Advocate for Def. : A. Sirajudeen, Adv.

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

Judgement :

B. Akbar Basha Khadiri, J.

1. This criminal original petition has arisen in this way :

The respondent preferred a private eomplaint against the petitioner and two others arraying the petitioner as third accused. According to the respondent/complainant, the first accused is a firm and accused Nos. 2 and 5 are the partners of the firm.

Towards purchase of goat skins from the complainant, on behalf of the first accused firm, the second accused issued a post-dated cheque dated April 27, 1998, for Rs. 4,031,715, drawn on Canara Bank, Park Town Branch, Madras. When the complainant presented the cheque through his Bankets for collection during July, 1998, the cheque bounced with an endorsement 'funds insufficient'. Again, he had presented the cheque on August 1, 1998, but the cheque was returned on August 5, 1998, with a similar endorsement. Therefore, the complainant issued a statutory notice demanding payment within fifteen days on August 18, 1998. Accused Nos, 1 and 2 received the notice on August 19, 1998, but they did not make any payment. Therefore, the respondent herein/complainant preferred the complaint against the company and the partners. In the complaint, the complainant had stated that at the time when he preferred the complaint, he was not aware of the name of the second partner, namely, the petitioner. Therefore, he has also added the petitioner as the party-accused to the complaint.

2. The petitioner who is the third accused in the complaint has filed this criminal original petition seeking to quash the proceedings on the following two grounds :

(i) It is the second accused, who issued the cheque and no statutory notice was issued to the petitioner. In the absence of issuance of a statutory notice, the respondent cannot proceed against the petitioner under Section 158 of the [Negotiable Instruments Act, 1881](#).

(ii) Nowhere in the complaint, is it alleged that the petitioner is in charge of and responsible for the conduct of the day-to-day affairs of the company.

3. Heard both the sides. It is not in dispute that the petitioner is a partner of the first accused firm. So far as issuance of notice is concerned, it is settled law that receipt of notice by a partner operates as notice to the firm and if notice is issued to a firm, then there is no question of issue of a notice to the partner. Learned Counsel for the respondent cited a decision reported in Jain Associates v. Deepak Chaudhary and Co., III (1999) CCR 538= (1999) 80 DLT 654, where a Single Judge of the Delhi High Court has pointed out that Section 141 of the Negotiable Instruments Act, envisages a deeming provision holding every person who was in charge of and was responsible to the company for the conduct of the business of

the company or partnership firm as well as the firm shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly, that Section 141 of the Negotiable Instruments Act, does not require that each and every partner of the firm is required to be issued notice, and the above said deeming provision imposing vicarious liability is to be seen in the light of the observations of the Supreme Court in *Electronics Trade and Technology Development Corporation Ltd. v. Indian Technologists and Engineers (Electronics) P. Ltd.*, I (1996) BC 217 (SC)=I (1996) CCR 136 (SC).

In the instant case, it is admitted that notice has been sent to the partnership firm, namely, the first accused. Notice to the firm is notice to the partner and, therefore, the first contention of the petitioner that since no notice was issued to him, the respondent/complainant cannot proceed against him under Section 158 of the Negotiable Instruments Act, falls to ground.

4. The next contention is that nowhere it is alleged in the complaint that the petitioner is in charge of and responsible for the conduct of the business and day-to-day affairs of the company. In *Girish K. Bhandari v. Lakshmi Finance and Industrial Corporation Ltd.*, I (2000) BC 579, a Single Judge of the Andhra Pradesh High Court has pointed out that in terms of Section 141 of the Negotiable Instruments Act, if an offence is committed by a company under Section 138 of the Negotiable Instruments Act, every person who at the time of the offence was responsible to the company for the conduct of the company, shall be vicariously liable for the offence. It has also been held that it is sufficient to make an allegation in the complaint with regard to the liability of the accused, and that whether they are actually liable or not will have to be considered through evidence.

5. In *Modern Denim Ltd. v. Lucas TVS Ltd.*, I (2000) BC 398= (1999) 2 MWN(Cr.) 284, S. Thangaraj J. has also considered this aspect in detail and pointed out that if there is no evidence to show that at the time of commission of offence, the petitioners were in charge of and were responsible to the company for the conduct of the business, then they are not liable. The learned Single Judge has reiterated the same view in the decision reported in *M. Chockalingam v. Sundaram Finance Service Ltd.* (1999) 2 MWN (Cr.) 344.

6. In the recent pronouncement of the Apex Court in *Anil Hada v. Indian Acrylic Ltd.*, it has been pointed out that the offender is the drawer of the cheque under Section 138 of the Negotiable Instruments Act, but by virtue of the fiction envisaged in Section 141 of the Negotiable Instruments Act, three categories of persons can be discerned within the purview of the penal liability; they are : (i) the company which committed the offence, (ii) everyone who was in charge of and was responsible for the business of the company, and (3) any other person who is a director or a manager or a secretary or officer of the company, with whose connivance or due to whose neglect the company has committed the offence.

7. Therefore, to rope in the partners, it be shown that they were at the helm of the affairs of the company. At least, there should be a pleading in the complaint to that effect to make them responsible.

8. In *Col R.S. Aggarwal, M.D., Haryana Petrochemicals Ltd. v. Ashok Leyland Finance Ltd.* (1998) 1 MWN (Cr.) 40, my learned brother, K. Govindarajan J. had occasion to deal with an identical matter. The noble Judge has pointed out that to bring the persons within the purview of Section 138 of the Negotiable Instruments Act, there must be some specific averment against those persons to take cognizance of the offence by the Magistrate with respect to those persons and that merely that the petitioners are directors, would not be enough to constitute an offence against them.

9. The same view has been expressed by learned brother M. Karpagavinayagam J. in *Coronation Printing Ink .* (1998) 2 MWN (Cr.) 291. The noble Judge referring to the earlier decisions reported in *Municipal Corporation of Delhi v. Ram Kishan Rohtagi*, : and *Sham Sunder v. State of Haryana*, : has pointed out that if no averments are made in the complaint that the partners who were the petitioners were in charge of and responsible for the conduct of the company and day-to-day affairs of the company, the complaint against those partners is not legally sustainable.

10. Thus, it would be evident that such partners who were in charge of and responsible for the conduct of the business and day-to-day affairs of the company are liable under Section 138 of the Negotiable Instruments Act. Though they

themselves might not have issued the cheque, to attract the culpability there should be an averment to that effect in the complaint. Mere mention that a particular person is a partner of the firm or the company is not sufficient to bring him under the mischief of Section 138 of the Negotiable Instruments Act.

11. In *Rajesh Bajaj v. State of NCT of Delhi*, : the Apex Court has held that as to whether the person in question was really in charge of and was responsible to the affairs of the company or not, and as to what functions, he was assigned in the affairs of the company and whether those functions could be considered sufficient to hold that he was in charge of the affairs of the company, are matters which have to be gone into during the trial. Their Lordships have pointed out that in a petition under Section 482 of the Code of Criminal Procedure, it is not permissible to adopt a strictly hypertechnical approach and 'sieve the complaint through a colander of finest gauzes' for testing the ingredients of the offence alleged against the accused.

12. I have perused the complaint in the instant case. Though it is stated that the petitioner is a partner of the first accused firm, nowhere in the complaint, has it been stated that he is in charge of and responsible for the conduct of and day-to-day affairs of the company. When that has not been stated in the complaint, it cannot be said that so far as the petitioner is concerned, the complaint contains the ingredients required to attract offence under Section 138 of the Negotiable Instruments Act. In that view of the matter, I am inclined to allow the criminal original petition. This criminal original petition is accordingly allowed. The further proceedings in C.C. No. 8826 of 1998 against the petitioner shall stand quashed. Consequently, CrI.M.P. Nos. 2187 and 2188 of 1991 are closed.