IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.629 OF 1997
WITH
CRIMINAL APPEAL No.630 OF 1997

Kayam Kaderbhai Nagree .. Appellant
Versus
Jayant S. Kumar & Anr .. Respondents

Mr.Niranjan Mundargi, appointed as Amicus Curiae, present.
Mr.Deepak Thakre, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 28th JULY, 2015

ORAL JUDGMENT :-

1 Both these Appeals can be conveniently disposed by this common order as the parties are the same, the questions needing determination are identical; and, at any rate, they can be disposed of on the basis of a common point.

2 The appellant is the original complainant. He had prosecuted the respondent no.1 by filing two separate complaints against him with respect to the offence punishable under section 138 of the Negotiable Instruments Act. In one case (C.C.No.1032/92) the amount of the dishonored cheque was Rs.1,50,000/- (Rupees One Lakh fifty thousand), and in the other

(C.C.No.1547/92) it was Rs.82,000/- (Rupees Eighty two thousand). Both the cases were tried by the Judicial Magistrate, First Class, Cantonment Pune, who convicted the respondent no.1 in both the cases. The respondent no.1 appealed to the Court of Sessions by filing two separate appeals – Appeal No.92/1994 arising out of C.C.No.1032/92 and Appeal No.93/94 arising out of C.C.No.1547/92. Both the Appeals were allowed by the learned Addl.Sessions Judge by quashing the conviction, and the sentences imposed upon the respondent no.1 by the Magistrate. Being aggrieved thereby, the original complainant has filed these two Appeals challenging the order of acquittal of the respondent no.1 as passed by the learned Addl. Sessions Judge in the aforesaid appeals.

3 Though the Appeals were being listed on board repeatedly, the parties and their Advocates never remained absent. It was, therefore, decided to hear the Appeals, notwithstanding their absence. To assist the Court, Mr.Niranjan Mundargi, Advocate was appointed as *amicus curiae*. The Appeals are being decided with his assistance and after hearing Mr.Deepak Thakre, learned the learned Additional Public Prosecutor for the State.

4 For the sake of convenience and clarity, the appellant shall be referred to as 'the complainant' and the respondent no.1 as 'the accused'.

5 I have gone through both the judgments of conviction as delivered by the Magistrate and both the judgments of acquittal as delivered by the Addl. Sessions Judge in the Appeals in both the

cases. I have also gone through the evidence adduced during the trial. Please make us a binding offer for the following deliveries.
 have also examined the original complaints in both the cases.

6 Though the order of acquittal as passed by the Addl. Sessions Judge is based on a number of factors, in the view that I am taking, it is not necessary to consider all those factors. It is because I am in agreement with the learned *amicus curiae* that the Appeals can be disposed of on the basis of a point of law which was also taken into consideration by the learned Addl. Sessions Judge.

7 The case of the complainant in both the complaints was as follows :-

That the complainant was the proprietor of Sogex Technical Engineers. The accused was the Managing Director of M/s.Dream Garments Exports Pvt.Ltd. M/s.Dream Garments Exports Pvt.Ltd had allotted the construction work of their new factory at Sanaswadi, Taluka Shirur, Pune, to the complainant. The complainant had completed the said construction work as per the requirements of the accused on October 1991. Towards the part-payment of the amount that was to be paid by the accused to the complainant for doing the work, the complainant had issued two separate cheques on two different dates which, as aforesaid, resulted in the prosecution of the accused in two separate cases.

8 <u>Thus, it is the case of the complainant that the cheques had been issued by the Company M/s.Dream Garments</u>

Exports Pvt.Ltd, and the accused had signed the same as the Managing Director thereof. There is no dispute about this position. Moreover, the cheques in both these cases also clearly bear a rubber stamp of M/s.Dream Garments Export Pvt.Ltd, and the accused has signed as a Director of the said Company. The evidence of the Bank Officer also categorically establishes that the account on which the cheques had been drawn was maintained by the Company M/s.Dream Garments Exports Pvt.Ltd.

8 M/s.Dream Garments Exports Pvt.Ltd was not an accused in any of the said cases. In facts, the complaint was filed only against the accused who, as aforesaid, was at the material time, the Managing Director of the Company M/s.Dream Garments Exports Pvt.Ltd, and who had admittedly signed the cheques for and on behalf of the said Company as its Director.

9 Among other things, the Addl. Sessions Judge held that when the cheque had been drawn by a Company, and when the Company itself was not prosecuted, the prosecution of the accused as a signatory to the cheques in question and in his capacity as a Director of the said Company, was not maintainable. According to the learned Addl.Sessions Judge, the Company M/s.Dream Garments Exports Pvt.Ltd itself ought to have been prosecuted as an accused, and it is only in that event that the accused could have been also prosecuted along with the said Company.

10 Mr.Mundargi submitted that the law on this point has been settled by the decision of the Apex Court in case of **Aneeta**

Hada Vs. Godfather Travels and Tours Pvt.Ltd.[1] decided on 27th April 2012. The said decision has been delivered by a Three Judge Bench of the Supreme Court of India. Indeed, in the said decision, a specific question i.e.

> Whether an authorised signatory of a Company would be liable for prosecution under section 138 of the Negotiable Instruments Act without the Company being arraigned as an accused ?

fell for the consideration of Their Lordships. Their Lordships, after taking a survey of a number of previous decisions of the Supreme Court of India on the relevant aspects and more particularly, after considering the decision in the case of **State of Madras Vs. C.V.Parekh & Anr** [2] answered the question in negative.

11 Their Lordships observed that *when an offence is committed by a Company, the prosecution of its Directors or Officers would be permissible only under the provisions of section 141 of the Negotiable Instruments Act*.

12 In the instant case, admittedly, the drawer of the cheque was the Company M/s.Dream Garments Exports Pvt.Ltd. The account on which the cheques had been drawn was not the account of the accused, but that of the Company. The accused had signed the cheques on behalf of the said Company and in his capacity as the Director thereof. Thus, for the dishonor of the cheque, the Company would be responsible and liable to be prosecuted. The accused would be liable for the offences only by virtue of the provisions of section 141 of the Negotiable

1 AIR 2012 SC 2795
2 AIR 1971 SC 447

Instruments Act. The legal position stands concluded by the following observations made by Their Lordships in the aforesaid judgment i.e.**Aneeta Hada Vs. Godfather Travels and Tours Pvt.Ltd.** [1]

> "we arrive at an irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself". (Para 43)

In view of this pronouncement of Law, there can be no doubt that the prosecution of the accused without arraigning the Company M/s.Dream Garments Exports Pvt.Ltd was bad in law.

13 The accused was entitled to be acquitted on this ground itself.

14 The orders passed by the Addl. Sessions Judge, being proper and legal, warrant no interference.

15 The Appeals are dismissed.

(ABHAY M. THIPSAY, J)

1 AIR 2012 SC 2795