

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4419 OF 2014

Mr. Bharat Mathur, Ex-Vice President (Corp.) ... Petitioner.
Services -M/s. Data Access India Ltd.

V/s.

Bharat Sanchar Nigam Ltd., & Anr. ... Respondents.

Mr. Abad Ponda a/w. D. M. Thakur i/by Dave & Co. for the
Petitioner.

Mr. Viral Shukla i/by Shukla and Associates for Respondent
No.1.

Mr. Rajesh More, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 24th FEBRUARY, 2015

P.C. :

1 Heard the learned counsel for the parties finally.

2 The issue raised in the present petition is as to whether a director or an employee of the company can be prosecuted for the offence punishable under section 138 of the Negotiable Instruments Act with the help of section 141 of the said Act when the offence is allegedly committed by the company, without impleading the company as an accused.

3 Before I proceed further it may be noted here that the same issue was raised before this court in criminal application no. 3809 of 2009 filed by the present petitioner and said application was dismissed on 20th January, 2010, holding that the company in such a case is not a necessary party as an accused.

4 The present petition is filed by the petitioner by relying upon the judgment of the Hon'ble Supreme Court in the case of **Aneeta Hada vs. Godfather Travels & Tours Pvt. Ltd.**, reported in 2012 AIR SCW 2693. It is submitted by learned counsel Mr. Abad Ponda, appearing on behalf of the petitioner that the law at the time when the earlier application was decided was different and that the whole scenario has changed now due to the judgment in the matter of Aneeta Hada vs. M/s. Godfather Travels (cited supra). My attention was drawn to para 43 of the said judgment which reads as under :

“43. In view of our aforesaid analysis, we arrive at the 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 only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of ratio laid down in C.V.Parekh (AIR 1971 SC 447) which is a three-Judge Bench

decision. Thus, the view expressed in Sheoratan Agarwal (AIR 1984 SC 1824) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (AIR 2000 SC 145 : 1999 AIR SCW 4428) is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries (AIR 1988 SC 1128) has to be treated to be restricted to its own facts as has been explained by us hereinabove.

5 Learned counsel Mr. Viral Shukla appearing on behalf of Respondent No.1 has submitted that the judgment cited by learned counsel Mr. Ponda is prospective and it will not have a retrospective effect. It was submitted that the complaint filed by respondent no.1 - Bharat Sanchar Nigam Ltd. is of the year 2004 and that the complaint will have to be decided on the basis of the law laid down by the Supreme Court in the matter of **Anil Hada vs. Indian Acrylic Ltd.**, reported in [(2000) 1 SCC 1 : AIR 2000 SC 145]. Reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of **Ramesh Kumar Soni vs. State of Madhya Pradesh**, reported in 2013 AIR SCW 1568, particularly on paras 22 and 23.

22. To the same effect is the decision of this Court in **Harish Dhingra v. State of Haryana and Ors.** : (2001) 9 SCC 550 where this Court observed:

*“7. Prospective declaration of law is a device innovated by this Court to avoid reopening of settled issues and to **prevent multiplicity of proceedings**. It is also a device adopted to **avoid***

uncertainty and avoidable litigation. By the very object of prospective declaration of law it is deemed that all actions taken contrary to the declaration of law, prior to the date of the declaration are validated. This is done in larger public interest. Therefore, the subordinate forums which are bound to apply law declared by this Court are also duty bound to apply such dictum to cases which would arise in future. Since it is indisputable that a court can overrule a decision there is no valid reason why it should not be restricted to the future and not to the past. Prospective overruling is not only a part of constitutional policy but also an extended facet of stare decisis and not judicial legislation.”

(Emphasis supplied)

23. In *Sarwan Kumar and Anr. v. Madan Lal Aggarwal* : (2003) 4 SCC 147, this Court held that though the doctrine of prospective overruling was initially made applicable to the matters arising under the Constitution but subsequent decisions have made the same applicable even to cases under different statutes. The Court observed:

*“15. The doctrine of "prospective overruling" was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of "prospective overruling" the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal **would otherwise work hardship to those who had trusted to its existence.** Invocation of doctrine of "prospective overruling" is left to the discretion of the court to mould with the justice of the cause or the matter before the court.”*

(Emphasis supplied)

6 I have gone through the said judgment. It will be sufficient to note that the case pending against the petitioner, filed by respondent no.1, has not reached finality and, therefore, the question of applicability of the said judgment cited by the learned Advocate Mr. Viral Shukla for respondent

no.1 does not arise. It need not be stated that the case pending in the court of Magistrate will be governed by the principles laid down by the Hon'ble Supreme Court in the case of **Aneeta Hada vs. M/s. Godfather** (cited supra). In view of thereof, though the earlier application of the petitioner was dismissed by this court, the present petition is maintainable and the petitioner is entitled for the relief sought by him in the present petition.

7 Hence, I pass following order :

- i. Writ petition is allowed.
- ii. The proceedings pending against the Petitioner i.e. C.C.No. 2411/SS/2007 before the Metropolitan Magistrate, Court, Ballard Pier, Mumbai, shall stand quashed.
- iii. Bail bond, if any, of the Petitioner shall also stand cancelled.

8 Writ petition is disposed of accordingly.

(JUDGE)

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