IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.12.2014

DELIVERED ON : 27.03.2015

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

CRL.R.C.No.955 of 2011

R.Vivekanandan
S/o.Ramalingam ...Petitioner/Appellant/Accused

vs.

Vijayalakshmi
W/o.Adhimoolam ...Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the judgment of learned Additional District Sessions Judge, Fast Track Court II, Cuddalore, passed in C.A.No.103 of 2007 on 13.05.2011 confirming the judgment of learned Judicial Magistrate, Panruti, passed in S.T.C.No.1705 of 2002 on 29.10.2007.

For Petitioner : Mr.P.Kumaresan

For Respondent : Mr.V.Ramesh
for Mr.T.Thiyagarajan

O R D E R

This Criminal Revision arises against concurrent judgments of Courts below convicting petitioner of offence u/s.138 of the Negotiable Instruments Act and sentencing him to undergo 3 months S.I. and directing payment of compensation in a sum of Rs.4,00,000/- i/d 2 months S.I.

2. Respondent/complainant preferred a complaint informing that petitioner is the founder of "Krishna Educational Trust" and he had

borrowed a sum of Rs.4,00,000/- towards developing the college viz., “Sri Krishna Engineering College”. Towards repayment of the same, petitioner issued a cheque bearing No.386400 dated 20.06.2002 drawn on Indian Overseas Bank, Kilpauk, Chennai. Respondent presented the cheque for payment in State Bank of India, Panruti, on 29.06.2002 but the same were returned unpaid owing to "insufficient funds" on 13.07.2002. Once again, the cheque was presented for payment on 27.08.2002 and was returned for the same reason on 09.09.2002. Respondent/complainant caused statutory notice on 12.09.2002 and petitioner/accused having received the same on 14.09.2002, failed to effect repayment. Hence, in keeping with the provisions of Section 138 of the Negotiable Instruments Act, respondent/ complainant preferred complaint.

3. Before trial Court, two witnesses were examined on the side of respondent and seven exhibits were marked. None were examined on behalf of the defence nor were any exhibits marked.

4. On appreciation of evidence, trial Court, under judgment dated 29.10.2007, convicted and sentenced petitioner to undergo 3 months S.I. and directed payment of compensation in a sum of Rs.4,00,000/- i/d 2 months S.I. Against the conviction, petitioner moved C.A.No.103 of 2007 before learned Additional District Sessions Judge, Fast Track Court II, Cuddalore, which came to be dismissed under judgment dated 13.05.2011. There against this revision.

5. Heard learned counsel for petitioner and learned counsel for respondent.

6. The complaint of Respondent begins with informing:

'Petitioner, who is a close relative of respondent, is the founder of a trust viz., 'Krishna Educational Trust' and he started a Self Financing Engineering College by name 'Sri Krishna Engineering College' at Ramavaram, Chennai, under the said trust. Towards developing the said College, petitioner had borrowed a sum of Rs.4,00,000/- from respondent/ complainant. Towards repayment of the same, petitioner issued a cheque bearing No.386400 dated 20.06.2002 drawn on Indian Overseas Bank, Kilpauk, Chennai. Respondent presented the cheque for collection in State Bank of India, Panruti, on 29.06.2002 but the same were returned unpaid owing to "insufficient funds" on 13.07.2002. Once again, the cheque was presented for payment on 27.08.2002 and was returned for the very same reason on 09.09.2002. Respondent/complainant caused statutory notice on 12.09.2002.

Thereafter, presentation of the cheque, return thereof, issuance of statutory notice and preference of complaint in keeping with Section 138 of the Negotiable Instruments Act are informed.'

7. The cheque has been drawn on the account of the college. Only the signatory of the cheque/Chairman of the College has been arrayed as an accused. When admittedly, borrowings were effected towards development of the College constituted under the Trust, the liability therein primarily would be that of the Trust/College. Only such Trust/College is arrayed as an accused, petitioner may be proceeded against on the assertion that he is incharge of and responsible to the Trust/College in the conduct of its affairs. That he is so would find support from the fact that he is the signatory of the cheque. However, in the absence of arraying the Trust/College, the question of vicarious liability of petitioner does not arise.

8. This Court in Abraham Memorial Educational Trust and others v. C.Suresh Babu [2012 (2) MWN (Cr.) (DCC) 161 (Mad.)] held that a Trust would answer to the name of the 'Company' as defined in proviso to Section 141 of the Negotiable Instruments Act. While so, offences of dishonour of cheque would be that committed by the juridical person, the Trust. The decision in Aneeta Hada v. Godfather Travels & Tours (P) Ltd., ((2012) 5 SCC 661) informs that impleading the company as one of the accused is a mandatory requirement and prosecution of the Director or authorised signatory of cheque without arraying the company as an accused would not be maintainable.

9. For the aforesaid reason, this Criminal Revision shall stand allowed. The judgments of Courts below shall stand set aside. Petitioner is acquitted of all Charges. Fine amount, if any paid, shall be refunded to petitioner. Bail bonds, if any, shall stand cancelled.

10. We would part with this case feeding the following thought:

Juridical persons are subject to the law of the land. An example may be found in the Income Tax Act, 1961, describing the word 'person' to include not only company, firm, association of persons, etc. but also juridical persons. The earlier understanding that there can be no vicarious liability for offences except where statutes specifically provide therefor has been watered down with the application of the 'alter ego' principle also to offences under the Indian Penal Code (See Iridium India Ltd., v. Motorola Inc., ((2011) 1 SCC 74)). Is it necessary to see offences under Section 138 of the Negotiable Instruments Act committed by persons other than individuals only through the prism of Section 141 of the Negotiable Instruments Act? Towards serving the social objective sought to be achieved by making punishable dishonour of cheques and in keeping with Section 138 of the Negotiable Instruments Act, can't juridical persons and person in charge thereof be made amenable to prosecution by resort to the 'alter ego' principle so readily applicable in Corporate Law?

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gm

To

1.The Judicial Magistrate,
Panruti.

2.The Additional District Sessions Judge,
Fast Track Court II,
Cuddalore.

CRL.R.C.No.955 of 2011

NM (CO)
PSI (17.04.2015)