



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

CrI.R.C.(MD).No. 269 of 2015

1.The Lakshmi Shanmuga Spinning Mills Ltd.,
Namanasamuthiram,
Pudukkottai District.

2.V.Gopalakrishnan

3.R.Gurusamy

4.Sambasiva Rao (died)

5.Veerasamy

.. Petitioners/Appellants/Accused 1 to 5

Vs.

The Provident Fund Inspector,
rep. by M.Kanagu,
Trichy Circle,
Shree Complex "D" Block,
No.18, Madurai Road,
Trichy - 620 008.

.. Respondent/Respondent/Complainant

PRAYER: Criminal revision filed under Section 397 r/w 401 of Cr.P.C. against the judgment, dated 06.05.2011, made in C.A.No.73 of 2010 by the learned Additional District and Sessions Judge (Fast Track Court), Pudukkottai, confirming the conviction and sentence, dated 19.03.2010, made in C.C.No.169 of 2006, by the learned District Munsif cum Judicial Magistrate, Thirumayam.

For Petitioners

: Mr.M.Subash Babu

For respondent

: Mr.V.S.Karthi

ORDER

The petitioners are the accused Nos.1 to 5 in C.C.No.169 of 2006 on the file of the learned District Munsif cum Judicial Magistrate, Thirumayam. The respondent is the complainant in the case. The respondent filed the said case by way of private complaint alleging that the petitioners have committed offence under Section 14(1B) of the Employees' Provident Fund and Miscellaneous Provisions Act (hereinafter referred to as "the Act"). The petitioners pleaded not guilty. The fourth accused - Mr.P.Sambasiva Rao died during trial. The trial Court, by judgment dated 19.03.2010, convicted the accused 2, 3 & 5 under the said provision and sentenced them to pay a fine of Rs.500/- each, in default to undergo simple imprisonment for one month. Challenging the same, they filed an appeal in C.A.No.73 of 2010. By judgment dated 06.05.2011, the lower appellate Court confirmed the conviction and sentence passed by the trial Court. Challenging the same, the petitioners are before this Court with



2. I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent. I have also perused the records carefully.

3. The brief facts of the case are as follows;

The first accused is a company. In terms of Section 14(1B) of the Act, for the period between March 2004 and May 2004, according to the respondent, the first accused / company did not deduct the employees' contribution from their wages and pay to the organisation. The total amount comes to Rs.17,038,20. The failure of the first accused / company to pay the said amount within the time stipulated is an offence punishable under Section 14(1B) of the Act. So far as the accused 2 to 5 are concerned, it is stated that they are the directors of the company and therefore, they are also liable to be punished. The trial Court did not convict the first accused and instead, it convicted the accused 2, 3 & 5 alone. That was confirmed by the lower appellate Court also.

4. The learned counsel for the petitioners would submit that in the absence of conviction of the first accused/company, the accused, 2, 3 & 5 cannot be convicted at all. For this purpose, the learned counsel would rely on Section 14(1B) of the Act, which reads as follows;

"14. Penalties - (1), ... (1A),

(1B) An employer who contravenes, or makes default in complying with, the provisions of Section 6C or clause (a) of sub-section (3A) of Section 17 insofar as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to one year, but which shall not be less than six months and shall also be liable to fine which may extend to five thousand rupees.

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term."

5. The learned counsel would submit that only on holding that the company has committed the offence, the persons responsible for the company can be held to be guilty. In this case, the trial Court as well as the lower appellate Court have not held the first accused / company guilty of the offence under Section 14(1B)(2) of the Act. Therefore, according to the learned counsel, the conviction of the accused 2, 3 & 5 is not sustainable. In this regard, the learned counsel would rely on a judgment of the Hon'ble Supreme Court in Aneeta Hada & others Vs. Godfather Travels & Tours Private Limited and another, reported in 2012 (5) CTC 101 and another judgment in Adoni Cotton Mills Ltd., and others VS. Regional Provident Fund Commissioner and others, reported in 1995 Supp (4) SCC 580.

6. The learned counsel appearing for the respondent would stoutly oppose this petition. According to him, the respondent had prosecuted the first accused, but the Courts below have erred in not convicting the first accused. For that, the accused 2, 3 & 5 cannot be acquitted.

7. I have considered the above submissions.

8. The judgment relied on by the learned counsel for the petitioners relates to Section 141 of the Negotiable Instruments Act. In Aneeta Hada case, the Hon'ble Supreme Court has observed as follows in para 39:

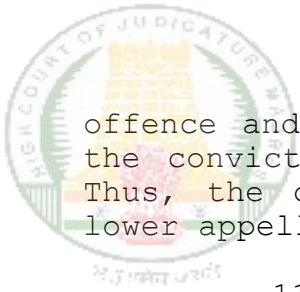


"39. it is to be borne in mind that Section 141 of the Act is concerned with the offences by the Company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant."

9. Again in para 42, the Court has held as follows;

"42. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the Company. The learned Counsel for the respondents have vehemently urged that the use of the term "as well as" in the Section is of immense significance and, in its tentacle, it brings in the company as well as the director and/or other officers who are responsible for the acts of the Company and, therefore, a prosecution against the directors or other officers is tenable even if the company is not arraigned as an Accused. The words "as well as" have to be understood in the context. In Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd., and others, 1987 (1) SCC 424, it has been laid down that the entire statute must be first read as a whole, then Section by Section, clause by clause, phrase by phrase and word by word. The same principle has been reiterated in Deewan Singh and others Vs. Rajendra Prasad Ardevi and others, 2007 (10) SCC 528; and Sarabjit Rick Singh Vs. Union of India, 2008 (2) SCC 417. Applying the Doctrine of Strict Construction, we are of the considered opinion that commission of offence by the Company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the Company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted."

10. A cursory perusal of Section 141 of the Negotiable Instruments Act and Section 14(1B) of the Act, would go to show that they are in *pari materia*. The Hon'ble Supreme Court in these judgments has categorically held that in the absence of a finding that the company is guilty, the persons responsible for the company and its day-to-day affairs cannot be punished at all. In the instant case, the first accused / company has not been convicted, though prosecuted. In the absence of the finding that the first accused/company is guilty of the



offence and in the absence of punishment for the first accused/company, the conviction of the petitioners 2, 3 & 5 is not at all sustainable. Thus, the conviction recorded by the trial Court and confirmed by the lower appellate Court is liable to be set aside.

11. In view of the above, this Criminal Revision Case is allowed and the conviction and sentence imposed by the trial Court and confirmed by the first appellate Court as against the accused 2, 3 & 5 is set aside and they are acquitted. The bail bond, if any, executed by them shall stand terminated. The fine amount, if any, paid shall be refunded to them.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge,
(Fast Track Court), Pudukkottai.

2.The District Munsif cum Judicial Magistrate,
Thirumayam.

+1cc to MR.M.S.SUBASH BABU, Advocate in SR.No. 38826

+1cc to MR.V.S.KARTHI, Advocate in SR.No. 38808

Gcg

SR : 01.08.2015 : 4p/5c

Crl.R.C (MD) No.269 of 2015

14.07.2015

(14/16)