

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2016

(Orders Reserved on : 19.07.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.774 of 2016
and
Crl.M.P.No.5809 of 2016

N.Harihara Krishnan ... Petitioner/Respondent/Accused

Vs.

J.Thomas ... Respondent/Petitioner/Complainant

Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, against the order made on 21.04.2016 in Crl.M.P.No.6771 of 2015 in C.C.No.2925 of 2012 on the file of the Metropolitan Magistrate-Fast Track Court No.IV, George Town, Chennai.

For Petitioner : Mr.B.R.Shnkaralingam
For Respondent : Mr.S.Namo Narayanan

ORDER

This Criminal Revision Case is directed against the order dated 21.04.2016 passed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, in Crl.M.P.No.6771 of 2015 in C.C.No.2925 of 2012.

2. In this case, the respondent herein/complainant had initiated a complaint under Sections 138 and 142 of the Negotiable Instruments Act before the learned VII Metropolitan Magistrate, George Town, Chennai, in C.C.No.2925 of 2012 against the petitioner. The cheque in question was issued by the Company and statutory notice was also issued to the Company and the above complaint has been filed as against individual without arraying the Company as a party to the complaint. Hence, at the time of trial, without giving any reason, the complainant has filed a petition to implead the Company as a party and the said petition was allowed by the learned Magistrate on 21.04.2016. As against the said order, the present Criminal Revision Case is preferred by the revision petitioner/accused before this Court.

3. The learned counsel for the petitioner vehemently contended that the trial Court has failed to consider the fact that no reason has been assigned in the petition filed to implead the drawer of the cheque that too after three years from the date of filing the complaint. It is further contended that the trial Court, without following the dictum laid down by the Hon'ble Apex Court, allowed the petition filed for impleading. Since the trial Court is erred in allowing the impleading petition which was filed after three years from the date of filing the complaint, the learned counsel prayed that the order of the trial Court has to be set aside and the Criminal Revision case has to be allowed.

4. In support of his contentions, the learned counsel for the petitioner has relied on a decision of the Gujarat High Court in Special Criminal Application (Quashing) No.4536 of 2015 (Oanali Ismailji Sadikot Vs. State of Gujarat). The learned counsel for the petitioner has also relied on a decision of the Hon'ble Apex Court reported in 2012(5) SCC page 661 (Aneeta Hada Vs. Godfather Travels and Tours Private Limited), wherein, at paragraph Nos.58 and 59, the Hon'ble Apex Court has held as follows:-

"58. 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.

59. 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 drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in State of Madras v. C.V. Parekh (1970) 3 SCC 491 which

is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal v. State of M.P., (1984) 4 SCC 352 does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1 is overruled with the qualifier as stated in para 51. The decision in U.P. Pollution Control Board v. Modi Distillery (1987) 3 SCC 684 has to be treated to be restricted to its own facts as has been explained by us hereinabove."

5. The learned counsel for the respondent would contend that the trial Court, after appreciating the evidence and documents adduced on either side, came to a correct conclusion and allowed the impleading petition filed by the complainant and therefore, there is no illegality or infirmity in the order passed by the trial Court and hence, he prayed that the order of the trial Court has to be confirmed and the Criminal Revision Case has to be dismissed.

6. In this case, admittedly, the complaint was preferred by the complainant against the individual person. It is further admitted that the company was impleaded as a party to the complaint at the time of filing of the complaint. Further, it is admitted that the cheque in question was issued by the drawer of the cheque viz., M/s.Dakshin Granites Private Ltd. Further, on reading of the order of the Trial Court, it reveals that notice was issued under Section 138(b) of the Negotiable Instruments Act to M/s.Dakshin Granites Private Ltd. On reading of the order of the Trial Court, it also reveals that the complainant had filed a petition in CrI.M.P.No.6771 of 2015 under Section 319 of Cr.P.C., to implead M/s.Dakshin Granites Private Ltd., as an accused in C.C.No.2925 of 2012 and also filed another petition in CrI.M.P.No.1257 of 2016 under Section 142 (b) of the Negotiable Instruments Act, to condone the delay of 1211 days in filing the above said impleading petition and common order was passed in both the petitions. In this case, the present revision is preferred only against the order passed in CrI.M.P.No.6771 of 2015 in C.C.No.2925 of 2012, which was filed to implead M/s.Dakshin Granites Private Ltd., as an accused in the private complaint and no appeal or revision was preferred against the order passed in CrI.M.P.No.1257 of 2016 by either side. The Trial Court, after considering the arguments of both sides, came to a conclusion that since the case was already taken on file and cognizance of the offence was taken, in this case, separate petition to condone the delay of 1211 days is not necessary and M/s.Dakshin Granites Private Ltd. was impleaded as an accused. Admittedly, statutory notice under Section 138 (b) of the Negotiable Instruments Act was issued to

M/s.Dakshin Granites Private Ltd., and M/s.Dakshin Granites Private Ltd., has not preferred any revision before this Court. Hence, the present petitioner is only the signatory. Even according to the present petitioner, who is an individual person and who signed the cheque represents the company.

7. In view of the above facts and circumstances of the case, since the company M/s.Dakshin Granites Private Ltd., has not preferred any revision before this Court, this Court is of the considered view that the revision preferred by the petitioner is not at all maintainable no merits in the petition. This Court finds no illegality or infirmity in the order passed by the Trial Court and this Court finds no reason to interfere with the order of the Trial Court and the revision deserves to be dismissed.

8. Accordingly, the Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is closed. The parties are left open to raise issues regarding the maintainability at the time of final hearing of the main case.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jr1

To

The Metropolitan Magistrate,
Fast Track Court No.IV, George Town,
Chennai.

+1cc to Mr.S. Namo Narayanan, Advocate, S.R.No.67652

cnr (CO)
md(05/12/2016)

Cr1.R.C.No.774 of 2016