

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Petition No.13635 of 2013

Between:

Dr.G. Ramakrishna Reddy.

... Petitioner/Accused No.2

AND

The State of Andhra Pradesh
Rep. by its Public Prosecutor,
High Court of Andhra Pradesh
and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED: **13.08.2018**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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... Respondents

! Counsel for Petitioner : Sri M. Jagadish Kumar

^ Counsel for Respondent No.1 : Public Prosecutor (Telangana)

^ Counsel for Respondent No.2 : Sri K. Chaitanya

< Gist:

> Head Note:

? Cases referred:

- 1) 2013 Cri.L.J. 3743 (SC)
- 2) 2005 Cri.L.J. 314 (AP) = MANU/AP/0923/2004
- 3) AIR 2008 SC 1246 = (2008) 5 SCC 449
- 4) 2013 (1) Crimes 81 = MANU/TN/1081/2012
- 5) 2012 (5) CTC 203 = MANU/TN/1088/2012

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.13635 of 2013

ORDER:

The point for determination is:

“Whether a Hindu Undivided Family (HUF) is “association of individuals” within the mischief of Section 141 of Negotiable Instruments Act, 1881 (for short “N.I. Act”) so as to be called as a company to prosecute the accused under Section 138 of N.I. Act?”

2) The factual matrix of the case is thus:

a) The 2nd respondent herein is the complainant, who filed C.C.No.1054 of 2012 on the file of IX Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, under Sections 138 and 142 of N.I. Act against A.1 and petitioner/A.2. A.1 is the son of A.2 and as per complaint allegations theirs is a Hindu Undivided Family. Both the accused approached the complainant and sought hand loan for the purpose of meeting their urgent family necessities and in view of the acquaintance with them, complainant advanced an amount of Rs.9,00,000/- from time to time. The accused promised to repay the amount with interest @ 18% per annum within a period of two(2) years. In the last week of August, 2012 on the demand of the complainant, Accused No.2 being the Kartha of HUF, confirmed the due amount as

Rs.13,50,000/-. Accused No.1 as a member of HUF, issued a cheque bearing No.271860 drawn on Central Bank of India, Himayathnagar Branch, Hyderabad dated 04.09.2012 for an amount of Rs.13,50,000/- to the complainant towards full and final settlement of the said loan. The said cheque on presentation bounced back with an endorsement “insufficient funds”. After following legal procedure, the complainant filed the complaint.

Accused No.2 filed the instant Criminal Petition seeking to quash the proceedings against him.

3) Heard arguments of Sri M. Jagadish Kumar, learned counsel for petitioner and Sri K. Chaitanya, learned counsel for 2nd respondent.

4) The main plank of argument of learned counsel for petitioner/A.2 is that A.1 issued the cheque to 2nd respondent/complainant from his individual bank account and he signed on the cheque and since A.2 is not a drawer and signatory of the said cheque, no penal liability, muchless, vicarious liability can be attributed against him under Section 138 of N.I.Act. He would further argue that the petitioner and A.1 though constituted as HUF, would not come within the purview of “association of individuals” in terms of Section 141 of N.I. Act, so as to be called as company to impose penal liability on petitioner/A.2 on the plea that he was in-charge of and responsible to the affairs of HUF. Thus his argument is that he is neither a signatory of the cheque nor their HUF is a company within the mischief of Section 141 to impose vicarious

criminal liability on petitioner/A.2. Learned counsel placed reliance on the decision reported in *Mrs. Aparna A. Shah v. M/s. Sheth Developers Pvt. Ltd. & another*¹, to contend that except the drawer of the cheque none others can be held liable for the offence under Section 138 of N.I.Act. He thus prayed to quash the proceedings against him.

5) Per contra, learned counsel for 2nd respondent/complainant would argue that admittedly the petitioner and A.1 constitute a HUF and both of them being Doctors are the active members of HUF and they approached the complainant and took loan of Rs.9,00,000/- from time to time for their family necessities and both of them promised to repay the loan with interest @ 18% p.a. A.1, on the instructions of petitioner/A.2 issued a cheque for Rs.13,50,000/- in due discharge of the loan amount, which was bounced back. In this backdrop, learned counsel would argue, though A.1 alone was the signatory of the cheque, still penal liability under Section 138 of N.I. Act can be imposed against petitioner/A.2 also as their HUF would come under the term company in terms of Section 141 of N.I. Act and petitioner/A.2 being the Kartha was in-charge of and responsible for the activities of the HUF. He thus prayed to dismiss the petition.

6) **POINT**: In this case admittedly A.1 issued the cheque and if it is established in trial that the cheque was bounced back, he being the drawer of the cheque will be liable under Section 138 of N.I.Act. So far as petitioner/A.2 is concerned, the rule in cases involving criminal

¹ 2013 Cri.L.J. 3743 (SC)

liability is generally against vicarious liability. In other words, no one is to be held criminally liable for the act of another. However, this general rule was provided with certain exceptions by incorporating specific provisions in the concerned penal legislations. For instance, Sections 34, 149, 120-B IPC etc., are the provisions in the Indian Penal Code depicting vicarious liability. Similarly, Section 141 of N.I. Act is one such provision, which speaks of vicarious liability of every person, who at the time the offence was committed was in-charge of and was responsible to the company for the conduct of the business of the company, apart from the company, in cheque bounce cases. Thus in short, there must be a specific provision to fix the vicarious liability on another person, who has actually not committed the act constituting the offence. Hon'ble Apex Court in *Mrs. Aparna A. Shah*¹ cited by the petitioner reiterated this principle, thus:

***“Para 13:** In the case on hand, we are concerned with criminal liability on account of dishonour of a cheque. It primarily falls on the drawer, if it is a Company, then Drawer Company and is extended to the officers of the company. The normal rule in the cases involving criminal liability is against vicarious liability. To put it clear, no one is to be held criminally liable for an act of another. This normal rule is, however, subject to exception on account of specific provision being made in statutes extending liability to others. For example, Section 141 of the N.I. Act is an instance of specific provision that in case an offence Under Section 138 is committed by a company, the criminal liability for dishonour of a cheque will extend to the officers of the company. As a matter of fact, Section 141 contains conditions which have to be satisfied before the liability can be extended. Inasmuch as the provision*

creates a criminal liability, the conditions have to be strictly complied with. In other words, the persons who had nothing to do with the matter, need not be roped in. A company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, the officers of the company, who are responsible for the acts done in the name of the company, are sought to be made personally liable for the acts which result in criminal action being taken against the company. In other words, it makes every person who, at the time the offence was committed, was in-charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence. It is true that the proviso to Sub-section enables certain persons to prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent commission of the offence. The liability Under Section 141 of the N.I. Act is sought to be fastened vicariously on a person connected with the company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability.”

7) It is to be noted that in ***Mrs. Aparna A. Shah***¹, the Apex Court held that though the husband of the appellant issued cheque to the respondent/complainant from the joint account of himself and appellant, still appellant cannot be held liable since she was not the signatory to the cheque. While holding so, the argument on behalf of respondent/complainant that the appellant/wife can be prosecuted in view of explanation to Section 141(2) of N.I. Act as an “association of individuals” was turned down by the Apex Court observing, the same was not the case of the complainant in the complaint. Thus the Apex Court ultimately held thus:

***“Para 23:** We also hold that under Section 138 of the N.I. Act, in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. The said principle is an exception to Section 141 of the N.I. Act which would have no application in the case on hand.”*

8) When the principles laid down in the above judgment are applied to the case on hand, admittedly petitioner/A.2 is not a signatory of the cheque and therefore, vicarious liability cannot be fixed on him under Section 138 of N.I. Act. Further, the cheque was also not issued from the joint account or the account of HUF but it was issued from the individual account of A.1. In these circumstances, generally vicarious liability cannot be fastened on A.2 unless it is established that the HUF wherein Accused Nos.1 and 2 are members, comes within the meaning of company under Section 141 of N.I. Act. It is at this juncture useful to extract Section 141 of N.I. Act:

“Section 141 - Offences by companies.—

(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in-charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.--For the purposes of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

So Section 141 of N.I. Act carves out an exception to the general rule that there can be no vicarious liability in criminal cases. It lays down that in a cheque bounce case, apart from company, every person, who at the time the offence was committed, was in-charge of and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Thus Section 141 of N.I. Act creates fictional liability on those members of the company, who were in-charge of and responsible for the conduct of the business of the company at the time of commission of the offence. Explanation to

Section 141 says that company means any body corporate and includes a firm or other association of individuals. Certainly the HUF of accused is neither a body corporate nor a firm. Hence the precise point is whether the HUF comes under the purview of “association of individuals” to term it as a company to fix deeming liability on petitioner/A.2.

9) It should be noted that a learned Single Judge of this Court in ***Jagadish Rai Agarwal and others v. State of Andhra Pradesh and others***², held as if a HUF comes under the term ‘company’ in terms of Section 141 of N.I. Act. He observed thus:

*“**Para 8:** x x x x I find force in the contention of learned counsel for respondents Nos.2 to 4 that since the dishonoured cheque was issued by the first petitioner as Karta of the HUF, petitioners Nos.2 to 4, being the sons of the first petitioner and members of HUF, in view of the Explanation to section 141 of the Act, like directors of a company, can be made liable for the offence under section 138 of the Act.....”*

However, that is not the end of the matter. Basing on the subsequent judgment of Hon’ble Apex Court in ***Ramanlal Bhailal Patel and others v. State of Gujarat***³, a learned Judge of the High Court of Madras in ***Arpit Jhanwar v. Kamlesh Jain rep. by its Power of Attorney Agent and Manager D. Lalit Kumar***⁴, held that HUF will not fall within the category of company in terms of Section 141 of N.I. Act. The said

² 2005 Cri.L.J. 314 (AP) = MANU/AP/0923/2004

³ AIR 2008 SC 1246 = (2008) 5 SCC 449

⁴ 2013 (1) Crimes 81 = MANU/TN/1081/2012

learned Judge in his latter judgment reported in *Abraham Memorial Educational Trust v. C. Suresh Babu*⁵, reiterated the same point thus:

*“**Para 34:** The judgment of the Andhra Pradesh High Court and Bombay High Court referred to above were also placed before me by the learned Counsel. But, after having scientifically analyzed the provisions of the Act and by having regard to the context in which Section 141 was incorporated, I had to express my inability to agree with the above views expressed by the Andhra Pradesh High Court and the Bombay High Court. According to me, a HUF is not an "Association of Individuals". The said conclusion is based on the judgment of the Hon'ble Supreme Court in **Ramanlal Bhailal Patel Vs. State of Gujarat** reported in MANU/SC/7119/2008 : 2008 (5) SCC 449, wherein, in paragraph 29 of the said judgment the Hon'ble Supreme Court has held as follows:*

29. Normally, where a group of persons have not become co-owners by their volition with a common purpose, they cannot be considered as a 'person'. When the children of the owner of a property succeed to his property by testamentary succession or inherit by operation of law, they become co-owners, but the co-ownership is not by volition of parties nor do they have any common purpose. Each can act in regard to his/her share, on his/her own, without any right or obligation towards the other owners. The legal heirs though co-owners, do not automatically become an 'association of persons/ body of individuals'. When different persons buy undivided shares in a plot of land and engage a common developer to construct an apartment building, with individual ownership in regard to respective apartment and joint ownership of common areas, the co-owners of the plot of land, do not become an 'association of persons/body of individuals', in the absence of a deeming provision in a statute or an agreement. Similarly, when two or more persons merely purchase a property, under a common sale deed, without any agreement to have a common or joint venture, they will not become an 'association of persons/body of individuals'. Mere purchase under a common deed without anything more, will not convert a co-ownership into a joint enterprise. Thus when there are ten co-owners of a property, they are ten persons and not a 'body of individuals' to be treated as a 'single person'. But if

⁵ 2012 (5) CTC 203 = MANU/TN/1088/2012

the co-owners proceed further and enter into an arrangement or agreement to have a joint enterprise or venture to produce a common result for their benefit, then the co-owners may answer the definition of a 'person'.

Para 35: *In the above judgment, the Hon'ble Supreme Court has made it very clear that a mere combination of individuals will not constitute an "Association of Individuals". To make it as an "Association of Individuals", in terms of Section 141 of the Act, it is absolutely necessary that the combination of individuals must be on their own volition. Secondly, it is also necessary that such combination of individuals must be with a common purpose. In an HUF, both the above essential requirements are absent inasmuch as an individual becomes a member of the HUF, not on his own volition but by birth. Similarly, there is no common purpose to be carried forward by a HUF. It is for these reasons, I had to hold that a HUF is not a Company in terms of Section 141 of the Negotiable Instruments Act."*

10) On a careful scrutiny of the judgment of our High Court in ***Jagadish Rai Agarwal***² and the judgment of the High Court of Madras in ***Abraham Memorial Educational Trust***⁵ based on the judgment of the Hon'ble Apex Court in ***Ramanlal Bhailal Patel***³, I am of the considered view that in view of the ruling of Hon'ble Apex Court, the judgment of our High Court in ***Jagadish Rai Agarwal***² cannot be followed. Mere combination of individuals will not constitute an "association of individuals" within the fold of Section 141 of the N.I. Act. In order to make an "association of individuals" in terms of Section 141 of N.I. Act, the said association of individuals shall fulfill two requirements. They are:

(1) The combination of the individuals must be on their own volition

- (2) Such a combination of individuals must be made with a specific common purpose i.e, for doing some business or some other legal activity.

HUF is concerned, as rightly observed by the learned Judge of High Court of Madras, both the essential requirements are missing. In HUF, the individual members will form into an association not by their consensus or volition but because of their very birth in a particular HUF. Therefore, the first essential ingredient is not fulfilled. Similarly for a HUF there is no common purpose to be carried forward. Each member of the HUF can act in regard to his or her share without any right or application to other owners. Therefore, the second essential requirement is also missing in case of HUF to make it an association of individuals within the fold of explanation to Section 141 of N.I. Act. Unfortunately, in the case of *Jagadish Rai Agarwal*², a learned Judge of this High Court had not happened to consider these aspects. However, subsequently the Apex Court and High Court of Madras happened to consider those aspects and ultimately High Court of Madras held that a HUF will not come within the meaning of “association of individuals” in terms of Section 141 of N.I. Act. While following the judgment of High Court of Madras for the reason it followed the dictum laid down by the Hon’ble Apex Court, I have to add one more dimension to the ruling of High Court of Madras that a HUF will not come under the association of individuals in terms of Section 141 of N.I. Act.

11) It is true that generally a HUF, since it does not fulfill the two essential requirements as stated supra, will not come under the term “association of individuals” in terms of Section 141 of N.I. Act. It means when a HUF is simply a family unit and not undertaking any activities like business or other legal functions, the said HUF will not come under the term “association of individuals”. However, sometimes we will come across that a HUF is engaged in some business or other legal activity. For instance, a father may expire leaving behind to his sons a business activity like a Rice Mill or a Cinema Hall or some other enterprise. The sons, who are the members of HUF may decide to continue the said business enterprise by becoming partners/shareholders in it. Here by birth in the HUF, they might have become members and there was no volition. However, they came to a common understanding to continue the family business. In such an event, in my considered view, they will fit into the slot “association of individuals” in terms of explanation to Section 141 of N.I. Act. Similarly, members of a HUF, who may not have a business or other enterprise at the inception, may commence such activity by an agreement. In such instance also, the HUF can be called as “association of individuals”. Thus in short, a HUF simpliciter without any activity will not come within the purview of “association of individuals” in terms of Section 141 of N.I. Act. However, if the HUF carries on a business or other legal activity through its members and in course of the said activity, if a cheque was issued and bounced, certainly the said HUF will come within the rigor of Section 141 of N.I. Act.

12) Coming to the case on hand, the accused no doubt constituted a HUF but the complaint does not show that they borrowed the amounts for any business or other legal activities carried on by HUF. In other words, their HUF is only a HUF simpliciter. As per complaint, they borrowed the amount for their family necessities. In such an event, the HUF of accused in my view does not fall within the phrase “association of individuals” in terms of Section 141 of N.I. Act. Therefore, Section 141 will have no application in the instant case and further, as petitioner/A.2 was not a signatory of the cheque, no vicarious liability can be fastened on him.

13) In the result, this Criminal Petition is allowed and proceedings in C.C.No.1054 of 2012 on the file of IX Additional Chief Metropolitan Magistrate, at Nampally are quashed against petitioner/A.2.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 13.08.2018

Note: L.R copy to be marked: YES / NO

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