



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
22.10.2021	26.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL. O.P. NO. 9482 OF 2018

AND

CRL. M.P. NOS. 4884 & 4885 OF 2018 & 9725 OF 2021

Mr.Balakrishna Raja
Authorised Signatory
BKR Hotels & Resorts Pvt. Ltd.
& Adhiparasakthi Promoters
& Property Developers
No.71, Usman Road, Off 21 & 22
Sarojini Street, T.Nagar
Chennai 600 017.

.. Petitioner/Accused

- Vs -

Mr.S.Peter

.. Respondent/Complainant

Criminal Original Petition filed u/s 482 Cr.P.C. praying this Court to call for the records culminating in S.T.C. No.1564 of 2017 on the file of the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur.

For Petitioner : Mr.M.Santhanaraman

For Respondent : Mr.Meiyappan Mohan, for
M/s.P.Wilson Associates



ORDER

The present petition has been filed for quashment of STC No.1564/2017 on the file of the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur in a case relating to Section 138 of the Negotiable Instruments Act.

2. It is the case of the the respondent, as could be culled out from the complaint, that the petitioner had approached him through one of his business friends and borrowed a sum of Rs.2,50,00,000/- for business purposes on 16.2.16, which the petitioner assured to repay within a month. As the said amount was not repaid, repeated demands made by the respondent resulted in the issuance of two cheques, bearing No.844815 for a sum of Rs.1,25,00,000/- drawn on Indian Bank, Ashok Nagar Branch, as authorised signatory of Adhiparasakthi Promoters and Property Developers and another cheque bearing No.002334 for a sum of Rs.1,25,00,000/- drawn on Karur Vysya Bank Ltd., T.Nagar Branch, as authorised signatory of BKR Hotels & Resorts Pvt. Ltd. However, on presentation of the cheques at Dena Bank, Thandalam, the respondent's banker on 10.1.17, the same were returned dishonoured citing the reason "insufficient funds". Due to the dishonour of the cheques, the complaint has been given by the respondent for proceeding against the petitioner u/s 138 of the Negotiable Instruments Act, which has been entertained by the court below leading to the registration of the case. Aggrieved by the same, the present petition is filed for quashment.

3. Learned counsel appearing for the petitioner submits that though the cheques were issued on behalf of the two companies by the authorised signatory, however, the complaint is bereft of any particulars as to the role of the petitioner in the two companies. Without establishing the direct control of the petitioner in the two companies and the involvement in the day to-day affairs of the companies, making the petitioner liable personally is wholly unsustainable and in the absence of the companies being made as a party to the complaint, the complaint u/s 138 of the Negotiable Instruments Act cannot be sustained.



4. It is the further submission of the learned counsel for the petitioner that it is settled position of law that cheque issued on behalf of the company, it is to be established that the authorised signatory to the cheque was in control of the day to-day affairs of the said company at the time of issuance of the cheques, as contemplated u/s 142 of the Negotiable Instruments Act. However, the complaint is devoid of any material on that aspect.

5. It is the further submission of the learned counsel for the petitioner that without arraying the companies as party to the complaint, filing the complaint against the petitioner in his individual capacity, more so when the cheques were issued by the authorised signatory of the company, is per se unsustainable and the complaint is liable to be dismissed for non-joinder of parties.

6. In support of his submission, learned counsel appearing for the petitioner relied on the following decisions :-

i) Aneeta Hada - Vs - Godfather Travels & Tours Pvt. Ltd. (2012 (5) SCC 661).

ii) Anil Gupta - Vs - Star India Pvt. Ltd. & Anr. (2014 (1) SCC 373)

7. Per contra, learned counsel appearing for the respondent submits that the petitioner has signed the cheques in the capacity of the authorised signatory of the companies and mere mentioning the status of the petitioner either as Director or Partner would not in any way defeat the purpose of the complaint and the said ground is wholly misconceived.

8. It is the further submission of the learned counsel for the respondent that the petitioner was involved in the day to-day administration of the company and merely because his capacity has not been mentioned in the complaint would not absolve his liability and, therefore, the complaint is maintainable and the cognizance taken on the said complaint is liable to be sustained.



10. The pivotal contention which requires to be addressed in the present case is whether in the absence of arraying the companies as party to the complaint, the present complaint is maintainable.

12. A perusal of the said complaint filed by the respondent herein reveals that the said complaint has been made u/s 138 and 142 of the Negotiable Instruments Act only against the petitioner herein. The companies have not been made as party to the complaint, though the cheques have been issued by the authorised signatory on behalf of the companies.

"22. On a reading of the said provision, it is plain as day that if a person who commits the offence under Section 138 of the Act is a company, the company as well as every person in charge of and responsible to the company for the conduct of business of the company at the time of commission of offence is deemed to be guilty of the offence. The first proviso carves out under what circumstances the criminal liability would not be fastened. Sub-section (2) enlarges the criminal liability by incorporating the concepts of connivance, negligence and consent that engulfs many categories of officers. It is worth noting that in both the provisions, there is a "deemed" concept of criminal liability.



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23. Section 139 of the Act creates a presumption in favour of the holder. The said provision has to be read in conjunction with Section 118(a) which occurs in Chapter XIII of the Act that deals with special rules of evidence. Section 140 stipulates the defence which may not be allowed in a prosecution under Section 138 of the Act. Thus, there is a deemed fiction in relation to criminal liability, presumption in favour of the holder, and denial of a defence in respect of certain aspects.

24. Section 141 uses the term "person" and refers it to a company. There is no trace of doubt that the company is a juristic person. The concept of corporate criminal liability is attracted to a corporation and company and it is so luminescent from the language employed under Section 141 of the Act. It is apposite to note that the present enactment is one where the company itself and certain categories of officers in certain circumstances are deemed to be guilty of the offence.

25. In Halsbury's Laws of England, Vol. 11(1), in Para 35, it has been laid down that in general, a corporation is in the same position in relation to criminal liability as a natural person and may be convicted of common law and statutory offences including those requiring mens rea.

26. In 19 Corpus Juris Secundum, in Para 1358, while dealing with liability in respect of criminal prosecution, it has been stated that a corporation shall be liable for criminal prosecution for crimes punishable with fine; in certain jurisdictions, a corporation cannot be convicted except as specifically provided by the statute.

27. In H.L. Bolton (Engg.) Co. Ltd. v. T.J. Graham & Sons Ltd. [(1957) 1 QB 159 : (1956) 3 WLR 804 : (1956) 3 All ER 624 (CA)] Lord Denning, while dealing with the liability of a company, in his inimitable style, has expressed that : (QB p. 172)



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"... A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are Directors and managers who represent the directing mind and will of the company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such."

In certain cases, where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. The learned Law Lord referred to Lord Haldane's speech in Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. [1915 AC 705 : (1914-15) All ER Rep 280 : 31 TLR 294 (HL)] , AC at pp. 713-14. Elaborating further, he has observed that:

"... in criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the Directors or the managers will render the company itself guilty."

28. It may be appropriate at this stage to notice the observations made by MacNaghten, J. in Director of Public Prosecutions v. Kent and Sussex Contractors Ltd. [1944 KB 146 : (1944) 1 All ER 119 (DC)] : (All ER p. 124)

"... A body corporate is a 'person' to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention—indeed it is much too late in the day to suggest the contrary. It can only know



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or form an intention through its human agents, but circumstances may be such that the knowledge of the agent must be imputed to the body corporate. Counsel for the respondents says that, although a body corporate may be capable of having an intention, it is not capable of having a criminal intention. In this particular case the intention was the intention to deceive. If, as in this case, the responsible agent of a body corporate puts forward a document knowing it to be false and intending that it should deceive, I apprehend, according to the authorities that Viscount Caldecote, L.C.J., has cited, his knowledge and intention must be imputed to the body corporate."

* * * * *

32. We have referred to the aforesaid authorities to highlight that the company can have criminal liability and further, if a group of persons that guide the business of the companies have the criminal intent, that would be imputed to the body corporate. In this backdrop, Section 141 of the Act has to be understood. The said provision clearly stipulates that when a person which is a company commits an offence, then certain categories of persons in charge as well as the company would be deemed to be liable for the offences under Section 138. Thus, the statutory intendment is absolutely plain. As is perceptible, the provision makes the functionaries and the companies to be liable and that is by deeming fiction. A deeming fiction has its own signification.

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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



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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 dragnet 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 C.V. Parekh (supra) which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (supra) is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove."

(Emphasis Supplied)

14. A careful perusal of the aforesaid decision of the Hon'ble Apex Court leaves this Court with no doubt that to fasten criminal liability on the individual, be it a partner or director of a company, necessity for arraying the company as a party to the complaint is mandatory and without the company being made a party, any complaint made against a Director/Partner is wholly not maintainable.



15. In the case on hand, a perusal of the complaint reveals that the petitioner alone is shown as party to the said complaint and it is the clear averment in the complaint that he is the authorised signatory. Therefore, it is crystal clear that the petitioner, in his capacity as authorised signatory of the company, had issued the cheques, which, in turn, got dishonoured, resulting in the present proceeding. However, without making the respective companies from which the cheques have been issued, the complaint against the petitioner alone cannot be proceeded with. Without arraigning the company as an accused, which is imperative, no prosecution could be maintained against the petitioner.

16. Once this Court has unambiguously arrived at a conclusion that the present proceeding initiated against the petitioner has no legs to stand in view of the companies not having been arrayed as a party, the ancillary contentions raised by the petitioner does not require any consideration as the whole prosecution initiated against the petitioner falls down like a pack of cards in the absence of the companies being arrayed as accused.

17. For the reasons aforesaid, the present criminal original petition is allowed quashing the proceedings in S.T.C. No.1564 of 2017 on the file of the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur. Consequently, connected miscellaneous petitions are closed. However, this order will not stand in the way of the respondent to proceed with the suit in C.S. No.967/2017 filed for recovery of the amount from the petitioner. Further, the court below, dealing with the civil suit, shall independently decide the suit without being influenced by any observation made for the purpose of disposal of the present case.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

GLN



To

The District Munsif-cum-Judicial Magistrate
Sriperumbudur.

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+2ccs to M/s.M.Santhanaraman, Advocate, S.R.No.55463, 55462

+1cc to M/s.P.Wilson Associates, Advocate, S.R.No.54861

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KSM(CO)

RLP(22/11/2021)