

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.728 OF 2021
IN
CRIMINAL APPEAL NO. OF 2021

M/s. Laxmikant Trading Company Pvt. Ltd., through its Director,
Deepak Shridhar Weginwar

Vs.

The State of Maharashtra, through its District Government Pleader, Chandrapur,
Dist. Chandrapur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Shraddhanand Bhutada, Advocate for applicant.
Mrs. M. H. Deshmukh, APP for non-applicant no.1/State.
Mr. Mahesh Rai, Advocate for non-applicant nos.2 and 3.

CORAM : AVINASH G. GHAROTE, J.
DATE : 12/07/2022

1. Heard Mr. Bhutada, learned counsel for the applicant and Mr. Rai, learned counsel for the non-applicant.

2. The revision challenges the judgment dated 4.10.2021 passed by the learned Sessions Court, Chandrapur in appeal, whereby the judgment rendered by the learned Special Court under Section 138 of Negotiable Instruments Act (for short 'the NI Act') dated 20.5.2015 convicting the non-applicant nos.2 and 3 for the offence punishable under Section 138 of the NI Act, and sentencing the non-applicant nos.2 and 3 to simple imprisonment for four months each and further directing

compensation of Rs.5,80,000/- to be paid jointly or severally, in default, simple imprisonment for two months each, has been set aside and dismissed the complaint, on the sole ground that the partnership firm of which the accused nos.1 and 2 were the partners namely Sarvadnya Tractors has not been made a party accused relying upon *Aneeta Hada Vs. Godfather Travels and Tours Private Limited, 2012 (5) SCC 661, K. S. Gupta Vs. Ashok Shaligram Gupta and others 2015 SCC OnLine Bom 8689 and Philip J. Vs. Ashapura Minechem Ltd. and another 2016 SCC OnLine Bom 10583.*

3. Mr. Bhutada, learned counsel for the applicant submits that in the instant case, it is not in dispute that Sarvadnya Tractors was a partnership firm of which the accused nos.1 and 2 were the only partners. The cheque in question has been issued for Sarvadnya Tractors by the accused nos.1 and 2, both of whom have signed as partners of Sarvadnya Tractors. It is therefore contended by placing reliance upon the language of Section 138 of the NI Act that both the accused were the drawers of the said cheque, and therefore, were liable for the offence as rightly held by the learned Special Court/Magistrate. It is contended that legal fictions are created only for some definite purpose and these must be limited to that purpose and should not be extended beyond that legitimate field by placing reliance upon *Commissioner of Income Tax, Kanpur Vs. Mother India*

Refrigeration Industries (P) Ltd, 1985 (4) SCC 1 (para 10). It is therefore, submitted that the legal fiction created by Section 141 of the NI Act was for the purpose of pinning the responsibility upon the person who was in-charge of and responsible for the business of the company and persons who were unconnected were not to be brought into the scope and ambit of Section 138 of the NI Act. It is contended that this was so for the reason that the company was a juristic entity having a separate legal existence and therefore, capable of doing business in its own name and being responsible for its actions, and consequences, though through its directors. It is in this context therefore, that only those directors, who were responsible for the conduct of the business of the company, or in-charge of the same could be held to be responsible for the offence under Section 138 of the NI Act. It is further contended that since a partnership firm has no separate legal entity but is merely a compendious name under which partners of the firm carry on business together, the explanation (a) and (b) to Section 141 of the NI Act ought to be read in a manner, which would be conducive to the legal intent of Section 138 of the NI Act, in as much as in a case, where all the partners of the firm were signatory of the cheque in question, they being drawers of the said cheque would be liable for the offence under Section 138 of the NI Act, and in such a circumstance, the firm not having any separate legal entity, absence of it being impleaded as an

accused or notice not being issued to it, would be of no consequence as the purpose and intent of Section 138 of the NI Act, read with Section 141 of the NI Act would be fulfilled. He submits, that the Hon'ble Apex Court in ***Aneeta Hada*** (supra) was called upon only to consider whether a company being a juristic person would be necessary to be impleaded as an accused in proceedings under Section 138 of the NI Act, and the question was accordingly answered in the affirmative, considering the legal juristic entity the company was. He therefore, submits that the legal fiction cannot be stretched to a partnership firm, in the peculiar facts indicated above, otherwise the very purpose and intent of Section 138 of the NI Act, would stand defeated.

4. Mr. Rai, learned counsel for the non-applicant nos.2 and 3, places reliance upon ***Dilip Hariramani Vs. Bank of Baroda 2022 SCC OnLine 579*** (para 16) which holds that the provisions of Section 141 impose vicarious liability by deeming fiction which presupposes and requires the commission of the offence by the company or firm. This position, has been followed in ***K. S. Gupta*** (supra); ***Rangabashyam Vs. Ramesh 2019 SCC OnLine Mad 17188***; ***Ramesh Nagarkoti Vs. Kedar Datt Purohit 2021 SCC OnLine Utt 745*** and ***Rajesh Sharma and Anr. Vs. State of Rajasthan and Anr. 2017 SCC OnLine Raj 2971***.

5. In my considered opinion, a question of general importance arises for determination, considering which, **Admit**.

6. Mrs. Deshmukh, learned APP waives service of notice for the respondent no.1/State.

7. Mr. Rai, learned counsel waives service of notice on behalf of the respondent nos.2 and 3.

8. List the matter for final hearing on 10.8.2022, after the admission board is over.

JUDGE

Sarkate