IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 469 of 2001

Sri Pankaj Kumar Trivedi
-Vs-
Rajiv Beri & Anr.

Amicus Curiae	:Mr. Ramasish Mukherjee
For the Opposite Parties	:Mr. Subir Baran Pramanik Mr. S. K. Bajoria
Heard on	:26.04.2023, 09.06.2023
Judgment on	:29.09.2023

Ananya Bandyopadhyay, J.:-

1. The instant criminal appeal is preferred by the appellant being aggrieved and dissatisfied with an impugned Order/Judgment of acquittal dated 23.08.2001 passed in Case No. C/2025 of 1996 by Learned Metropolitan Magistrate, 3rd Court, Kolkata acquitting from the charge under Section 138/141 of the Negotiable Instruments Act.

2. The Learned Magistrate took cognizance of the alleged offence and subsequently transferred the case to the Court of Learned 6th Magistrate for disposal. Process was issued, the accused nos. 1, 2 and 3 including the present two opposite parties entered appearance but process against the rest accused remained pending for long and so to evade long delay of the trial,

the petitioner withdrew the case against the rest accused and finally the case proceeded against the accused company and the two opposite parties.

3. After that, hearing the parties the Learned Magistrate was pleased to pass the impugned order and judgment and thereby acquit both the opposite parties.

4. The appellant submitted that the impugned order of acquittal was devoid of any legality and thus was liable to be set aside.

5. The appellant stated that from the impugned judgment it was palpably clear that the Learned Magistrate had acquitted both the opposite parties holding that although it had been well established in trial that the accused company committed the alleged offence under Section 138 of the said Act and although it was quite natural that the said opposite parties being the Managing Director and/or Joint Managing Director of the accused company would look after the business of the said company, but absence of documentary as well oral proof of vicarious liability against them in the trial, they were liable for such an order of acquittal.

6. Appellant also stated that the very official status as Managing Director of a company attached the identification with the acts of the company and such vicarious responsibility was absolute and never faded.

7. The appellant further stated that the Managing Director and/or Joint Managing Director being the qua company was/were always responsible for the acts of the company and no further proof, documentary and oral is necessary to hold him/them vicariously liable for the acts of the company. The Learned Magistrate erred to hold that because of non-production of the

deed of lease in respect of which the impugned cheques were issued by the accused company and/or any other documents coupled with oral statement in the trial to that effect, the said two opposite parties could not be held vicariously liable for the offence by the accused company.

8. The appellant stated that such vicarious liability was not necessarily visible or documentary but had to be felt and devalued from the ratio of the official status, responsibility of the accused. The Managing Director and/or Joint Magistrate Director was always to be held, because of their very official status and responsibility, responsible for the offence of the company.

9. The appellant also stated that throughout the trial it was not at all the case of the said two opposite parties that none of them was vicariously liable for the offence by the accused company and no suggestion to such effect had been given by them.

10. The appellant also stated that he made express and unequivocal averments regarding the vicarious liability in the petition of complaint and the said complaint had been proved and duly marked as exhibit in the trial. None of the opposite parties had made an iota of attempt to refute such charges against them in the entire trial nor even in their examination under Section 313 of the said Code and accordingly it was clear that the opposite parties had admitted their such vicarious liability for the act of the accused company and the Learned Magistrate in court below had no option to ignore that and impose his own notion.

11. Learned Advocate for the appellant submitted that –

i. The Learned Magistrate in the court below failed to appreciate the facts and circumstances of the case and also erred in law and passed the impugned order of acquittal wrongly and illegally.

ii. The Learned Magistrate failed to consider that, the power and position of the Managing Director and/or Joint Managing Director is completely otherwise and incomparable than/with those of an ordinary director and that the very status of him identified and attached him with the acts and liabilities of the company and passed the impugned order wrongly and illegally.

iii. The Learned Magistrate also failed to consider that, the Managing Director and/or Joint Managing Director was qua the company and as such was to answer for the acts of the company and to be responsible for the acts of the company always and such liability and responsibility could not be wiped of or dishonored by him at all and passed the impugned order arbitrarily and whimsically.

iv. The Learned Magistrate also failed to consider that, vicarious responsibility like conspiracy cannot necessarily be visible or based on documents but has to be inferred and concluded from the ratio of the powers and responsibilities and the ratio of the same and the relation of those with the alleged offence by the company and passed the impugned order arbitrarily on such wrong notion inviting interference by this Hon'ble Court.

v. The Learned Magistrate failed to appreciate that, the very official status of the said opposite parties spells out their vicarious responsibilities for the acts of the accused company and no further proof, documentary or oral, is necessary to hold them liable for the offence admittedly committed by the company and passed the impugned order of acquittal in favour of them whimsically and fancifully.

vi. The impugned order and judgment passed by the Learned Magistrate is unreasonable and based on surmise and conjectures and thus not tenable in law.

vii. The Learned Magistrate ought to have held both the opposite parties vicariously responsible for the offence committed by the accused company under Section 138 of the Negotiable Instruments Act and sentenced them accordingly and ought not to have acquitted so whimsically and arbitrarily.

viii. The impugned order is even otherwise bad in law and welcome an order of setting aside the same in appeal by this Hon'ble Court.

14. In order to prove its case the prosecution had cited 3 witness and defence cited 1 witness.

15. In his deposition PW-1 deposed that he was the Manager of Oriental Bank of Commerce, New Alipore Branch, which issued two cheques to Standard Son Industries Ltd. and two more cheques to Magma Leasing Ltd. These cheques were dishonored on the ground that it "exceeds arrangement". The said Bank

issued two return memos dated 25/9/96 marked as Ext. 1 collectively (Ext. 1, 1/1, 1/2, 1/3). PW-1 presented a certified copy of the account statement till 26/9/96 and a certified copy of cheque returned register which was marked as Ext. 2 and 3 respectively. The Ext. 2 dated 25/9/96 revealed debit balance of Rs.1,14,00,000/- approx.

In his cross-examination PW-1 stated *"C.C A/C limit of the accd. company is Rs. One Crore in this A/C"*.

16. PW-2 in his deposition stated that he was a Chief Manager of U.B.I., Park Street Branch in Calcutta. He mentioned that the complainant, Magma Leasing Ltd. was maintaining a cash credit A/C No. CC 318 with their Branch. The cheque no. 707684 dated 1/4/96 for Rs. 1,13,094/- and cheque no. 705891 dated 1/4/96 for Rs. 62,672/- were deposited on 24/9/96 for collection. These cheques were dishonored and remark stated "exceeds arrangement", which was marked as Ext.1/1 and 1/3. PW-2 certified the extract of the cheque return register.

17. PW-3 in his deposition state that he is the authorized representative of the complainant company M/s Magma Leasing Ltd. by virtue of a Board Resolution. The copy of Board Resolution dated 24/03/95 was signed by Mr. Sanjoy Chamaria who was the Director of the complainant company. PW-3 verified his signature which is marked as Ext. 5.

PW-3 deposed that he had filed a case against M/s Sanderson Industries Ltd. and its Directors being authorized signatory namely Rajib Beri, G.M Kapoor, Kallal Dey and Rabi Kumar Baul. They issued two cheque nos. 705891 dated 1/4/96 for Rs. 62,672/- and no. 707684 dated 1/4/96 for

Rs. 11,3,094/- to discharge two lease agreements. These cheques were drawn on Oriental Bank of Commerce New Alipore Brach in favour of the complainant company. The complainant deposited the said cheques at U.B.I., Park Street Branch on 24/9/96 for encashment. These two cheques were returned unpaid on the ground of “exceeds arrangement by two cheques memos dated 25/9/96”. The said cheque return memos were marked as Ext. 1 and 1/2. The said cheques were marked as Ext. 1/1 and 1/3. These two cheques were signed by Mr. Rabi Kumar Baul on behalf of the accused person. The complainant sent demand notice to the accused person through an advocate Mr. Srenik Sighvi. The notice dated 3/10/92 was signed by the said advocate in the presence of PW-3. This was marked as Ext.6. The nine postal receipts were marked as Ext.7 series. The notices were received by the accused company and other directors of authorized signatory on 5/10/96. These nine A/D cards were marked as Ext. 8 series. PW-3 also mentioned that the accused persons had not paid the dues. Thereafter PW-3 filed this complaint in the presence of his advocate Mr. Amitabh Das which was marked as Ext.9.

In his cross-examination PW-3 stated that P.W.3 stated that the cheque delivered to them as per agreement were post dated cheques. The complainant company gave lease of some equipment to accused company as per agreement. PW-3 mentioned one Mr. Bhaskar Sarkar who was the vice President of corporate finance of his company. PW-3 could not verify whether the agreement was terminated in 1996 or not. He also could not verify the said fact of termination of agreement which had been intimated by

Mr. Baskar Sarkar to the accused company. PW-3 denied the fact that the complainant had already taken possession of the hypothecated equipments from the accused company as per order of the High Court.

PW-3 was recalled on 22/6/2000, he stated that the complainant company did not intend to proceed with the case against the accused no. 9, Ravi Kumar Baul.

PW-3 was again recalled on 20/7/2000 and stated that he had filed a petition on 4/4/2000 stating that his company did not intend to proceed with the case against the accused no. 4, Kallol Dey, accused no. 6, Protap Singh Navalka and the accused no. 7, Amar Singh Ahilon.

18. DW-1 in his deposition stated he was an Assistant Manager-in-legal. He could not verify the amount or dues pending from the accused persons or the time of issuance of disputed cheques. DW-1 stated that a loan was issued to the accused company for Rs. 97,93,896/- and the accused company only refunded Rs.20,82,582/- which was exclusive of delayed payment charges and other expenses or charges. He could not verify whether the accused paid something to the cashier during the pendency of case. "*After time of filing of this case, said loan agreements was valid".*

Before filing of this case, the first agreement was terminated and the second agreement was terminated on 3/7/97. He could not verify the amount or dues on the date of termination of agreement.

DW-1 stated in his cross-examination that *"At the time of presentation of disputed cheques and filing of this case, the accd had liabilities to pay to the cashier and till date, said liability is existing".*

19. The complaint did not mention the specific act of the accused persons to be responsible and in charge of day to day conduct of the business. Paragraph-2 of the complaint states as follows:

> *"2. That the accused nos. 2 to 9 are the persons who at the time the offence was committed were in charge of and were responsible to the accused no. 1 for the conduct of the business of the accused no.1, Company, the said accused nos. 2 to 9 were in charge of management of the day to day affairs of the said accused no. 1. The accused no.1 is being controlled and managed by the accused nos. 2 to 9. In fact the cheques which were dishonoured has been signed by the company Secretary and Financial Controller, accused no. 9".*

20. The impugned judgment states the opinion of the Learned Trial Court as follows:

> *"The P.W. is the complt. of this case. He has proved the complaint in Court. As per complaint, the accds. no. 2 and 3 along with other accds. were in charge of and responsible for the conduct of business, of the accd. Co. But the P.W.3 has not stated in court that the accds. no. 2 and 3 were responsible for the conduct of business of the accd. Co. So there is no oral as well as documentary evidence on record to prove that the accds. no. 2 and 3 were responsible for the conduct of business of the accd. Co. It is quite natural that the accd. no. 2 and 3 being the Managing Director and Joint Director of the accd. Co. will look after the business of the said Co. but the question is whether they were responsible for the accd. Co. in the matter of disputed lease agreements and cheques? There is not evidence in this respect. As Section 141 of the N.I. Act is penal in nature, the complt. has to prove its case strictly beyond all sorts of reasonable doubts to find out the accd. pesons guilty. Mere statement in the complaint that accds. no. 2 and 3 were responsible for the conduct of business of the accd. Co. is not sufficient to find*

> *them guilty u/s. 138 read with S. 141 of the N.I. Act. The decision of the Hon'ble Courts as reported in 1999 Bankmann (sic) Page 841, 1998 CRI. L.J. Page 1122, 83 CWN Page 108 and DCR 83 Calcutta High Court are being followed in this respect".*

21. It is not categorically mentioned that the present accused persons had been exclusively dealing with the conduct of the business to have been in charge of the same. Moreover, the respondent/company did not proceed against accused nos. 4, 6 and 7. The question of vicarious liability of the respondents to be liable for the act of commission of the offence has not been individually delineated.

22. The Learned Trial Court was justified in acquitting the respondents/opposite parties. As such this Court is not inclined to interfere within the impugned judgment.

23. In view of the above discussions, the Criminal Appeal being CRA 469 of 2001 is accordingly dismissed.

24. I record my appreciation for the able assistance rendered by Mr. Ramasish Mukherjee, Learned Advocate as *Amicus Curiae* in disposing of the appeal.

25. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

26. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)