



Crl.A(MD)Nos.358 to 362 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19/10/2024

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THE HONOURABLE MR.JUSTICE G.ILANGOVAN

Crl.A(MD)Nos.358, to 362 of 2013

(1)Crl.A(MD)No.358 of 2013:-

Narayanan (Died)

- 1.N.Saraswathi
- 2.S.Sumathi
- 3.N.Skthivelan

: Appellants/LRs of the
Deceased appellant

(A1 to A3 are substituted
as per the common order
of this court, dated
05/08/2024 in Crl.MP(MD)
Nos.2349, 2351, 2354
2357 and 2373 of 2024 in
Crl.A(MD)Nos.358 to 362 of 2013)

Vs.

- 1.V.K.Veluchamy
For himself and as Managing Director
of M/s.Sapthagiri Milk Products Limited

- 2.K.Govindarajan,
Joint Managing Director,
M/s.Sapthagiri Milk Products Limited,
Atchaya Nagar,
Mugasi Pudur,
Bhavani,
Erode District.

- 3.Managing Director,
M/s.Sapthagiri Milk Products Limited,
No.5, 1st Street, Kumaran Nagar,
Kolathur,
Chennai-600 082.

: Respondents/Accused



Crl.A(MD)Nos.358 to 362 of 2013

Prayer: This Criminal Appeal is filed under Section 378 of the Criminal Procedure Code, to call for the records relating to the order, dated 07/10/2023 in CC No.310 of 2006 on the file of the Judicial Magistrate, Manapparai and to set aside the same.

(2)Crl.A(MD)No.359 of 2013:-

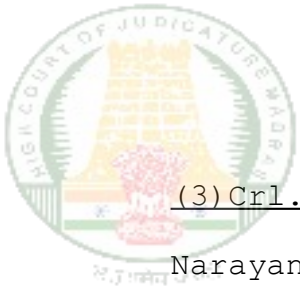
Narayanan (Died)

- 1.N.Saraswathi
- 2.S.Sumathi
- 3.N.Sakthivelan : Appellants/LRs of the
(A1 to A3 are substituted Deceased appellant
as per the common order
of this court, dated
05/08/2024 in Crl.MP(MD)
Nos.2349, 2351, 2354
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Crl.A(MD)Nos.358 to 362 of 2013)

Vs.

- 1.V.K.Veluchamy,
For himself and as Managing Director
of M/s.Sapthagiri Milk Products Limited
- 2.K.Govindarajan,
Joint Managing Director,
M/s.Sapthagiri Milk Products Limited,
Atchaya Nagar,
Mugasi Pudur,
Bhavani,
Erode District.

Prayer: This Criminal Appeal is filed under Section 378 of the Criminal Procedure Code, to call for the records relating to the order, dated 07/10/2023 in CC No.320 of 2006 on the file of the Judicial Magistrate, Manapparai and to set aside the same.



Crl.A(MD)Nos.358 to 362 of 2013

(3)Crl.A(MD)No.360 of 2013:-

Narayanan (Died)

- 1.N.Saraswathi
2.S.Sumathi
3.N.Sakthivelan : Appellants/LRs of the
(A1 to A3 are substituted Deceased appellant
as per the common order
of this court, dated
05/08/2024 in Crl.MP(MD)
Nos.2349, 2351, 2354
2357 and 2373 of 2024 in
Crl.A(MD)Nos.358 to 362 of 2013)

Vs.

- 1.V.K.Veluchamy.
For himself and as Managing Director
of M/s.Sapthagiri Milk Products Limited,
2.K.Govindarajan,
Joint Managing Director,
M/s.Sapthagiri Milk Products Limited,
Atchaya Nagar,
Mugasi Pudur,
Bhavani,
Erode District. : Respondents/Accused

Prayer: This Criminal Appeal is filed under Section 378 of the Criminal Procedure Code, to call for the records relating to the order, dated 07/10/2023 in CC No.331 of 2006 on the file of the Judicial Magistrate, Manapparai and to set aside the same.

(4)Crl.A(MD)No.361 of 2013:-

Narayanan (Died)

- 1.N.Saraswathi
2.S.Sumathi
3.N.Sakthivelan : Appellants/LRs of the
Deceased appellant



Crl.A(MD)Nos.358 to 362 of 2013

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2357 and 2373 of 2024 in
Crl.A(MD)Nos.358 to 362 of 2013)

Vs.

1.V.K.Veluchamy,
For himself and as Managing Director
of M/s.Sapthagiri Milk Products Limited

2.K.Govindarajan,
Joint Managing Director,
M/s.Sapthagiri Milk Products Limited,
Atchaya Nagar,
Mugasi Pudur,
Bhavani,
Erode District.

: Respondents/Accused

Prayer: This Criminal Appeal is filed under Section
378 of the Criminal Procedure Code, to call for the records
relating to the order, dated 07/10/2023 in CC No.340 of
2006 on the file of the Judicial Magistrate, Manapparai and
to set aside the same.

(5)Crl.A(MD)No.362 of 2013:-

Narayanan (Died)

1.N.Saraswathi
2.S.Sumathi
3.N.Sakthivelan

: Appellants/LRs of the
Deceased appellant

(A1 to A3 are substituted
as per the common order
of this court, dated
05/08/2024 in Crl.MP(MD)
Nos.2349, 2351, 2354
2357 and 2373 of 2024 in
Crl.A(MD)Nos.358 to 362 of 2013)

Vs.



Crl.A(MD)Nos.358 to 362 of 2013

1.V.K.Veluchamy,
For himself and as Managing
Director of M/s.Sapthagiri Milk
Products Limited

2.K.Govindarajan,
Joint Managing Director,
M/s.Sapthagiri Milk Products Limited,
Atchaya Nagar,
Mugasi Pudur,
Bhavani,
Erode District.

: Respondents/Accused

Prayer: This Criminal Appeal is filed under Section 378 of the Criminal Procedure Code, to call for the records relating to the order, dated 07/10/2023 in CC No.342 of 2006 on the file of the Judicial Magistrate, Manapparai and to set aside the same.

For Appellants : M/s.A.L.Gandhimathi
(in all cases) for Mr.K.S.Kathiravan

For Respondents : Mr.K.V.Muthuvisagan
(in all cases)

COMMON JUDGMENT

These Criminal Appeals are filed seeking to set aside the order, dated 07/10/2013 passed in CC Nos.310, 320, 331, 340 and 342 of 2006 by the Judicial Magistrate, Manapparai.

2.The facts in brief:-

The complainant is running a milk powder business in the name and style of Sri Ganapathy Stores at Woraiyur,



Trichy-3. A1 and A2 were having business transaction with the complainant. In the course of the transaction, the accused company was liable to pay **Rs.45,43,150/-**. Out of the above said due amount, cheques were issued drawn on Indian Bank as detailed herein:-

Calender Case No.	Cheque No.	Amount	Bank Name
CC No.310 of 2006	259380	Rs.9,00,000/-	Indian Bank Bhavani
CC No.320 of 2006	259392	Rs.9,00,000/-	- do -
CC No.331 of 2006	259391	Rs.9,00,000/-	- do -
CC No.340 of 2006	259393	Rs.9,00,000/-	- do -
CC No.342 of 2006	259394	Rs.9,43,150/-	- do -

3.All the cheques were presented for payment, returned unpaid on the respective dates mentioned in the complaint. After completing the statutory formalities, he filed the private complaint under Section 138 of Negotiable Instruments Act.

4.The trial Court has taken cognizance for the offence under Sections 138 of Negotiable Instruments Act and issued summons and on summons, the respondents appeared before the trial Court. The substance of the allegation was put to the accused. They denied.



5.The complainant examined himself as PW1 and marked Exs.P1 to P9. On the side of the accused, 3 witnesses were examined and 5 documents were marked as Exs.D1 to D5

6.After examination of the witnesses, the accused were examined under Section 313(1)(b) of Cr.P.C., with regard to incriminating circumstances found in the prosecution evidences. The accused denied the evidences.

7.At the conclusion of the trial process, the trial court recorded a finding that the complainant was having business dealing with the accused company; the complaint has been filed without impleading the company as an accused; It violates section 141 of the Negotiable Instruments Act. By recording that finding, it dismissed all the complaints and acquitted the accused.

8.Against which, these criminal appeals are filed.

9.Heard both sides.

10.The learned Senior counsel appearing for the appellants would submit that it is not denied and disputed by the accused that they were having business transaction with the complainant company; In the course of business



transaction only, the above said amount was due. So, in such circumstance, the capacity of the complainant cannot be challenged and the company was added as an accused and without noticing the same, all the complaints were dismissed by the trial court.

11.Per contra, the learned counsel appearing for the respondents would submit that A1 and A2 were added in the complaint in their personal capacity; The company is not added as an accused; In the complaint, the company is not an accused. So, offence punishable under section 138 of Negotiable Instruments Act will not lie against the respondents herein. In support of his contention, he would rely upon the judgment of the Hon'ble Supreme Court in **Aneeta Hada Vs. Godfather Travels and tours Private Limited [(2012)5 SCC 661]**.

12.Heard both sides.

13.Without going into other aspects, these appeals can be disposed of on the legality of the complaints.

14.As indicted in the order of the trial court, section 141 of the Negotiable Instruments Act reads as follows:-



"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



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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."

15.This was clarified by the Hon'ble Supreme Court in the judgment reported in **Aneeta Hada Vs. Godfather Travels and tours Private Limited [(2012)5 SCC 661]**, This is the principle of law. Apart from that, when there is statutory violation, then the complaint itself is illegal.

16.Whether it is a curable defect or not, is beyond the scope of the appeal, since it is not argued before me.



17. In the light of the above said position, now we will see the averments in the complaint.

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18. Reading of the complaint indicates that the complainant has specifically stated that the respondents company name is M/s. Sapthagiri Milk Products Limited. When it is admitted by the complainant himself that it is a company, the company ought to have been impleaded as accused.

19. Now we will read the cause title of the respondents herein as stated in the original complaint as follows:-

1. V.K. வேலுச்சாமி வயது 52
த/பெ.குப்புசாமிக்கவுண்டர்,
CoCo-Cola Distributor,
ஆலாலபுரம், வீரபாண்டி பிளவு (Via)
திருப்பூர்.

இவர் தனக்காகவும்,
சப்தகிரி மில்க் ப்ராடக்ட்ஸ் லிமிடெட்
நிறுவனத்திற்காக அதன் மேலாண்மை
இயக்குநர் என்ற கோதாவிலும்

2. திரு. K. கோவிந்தராஜன், வயது 46,
இணை மேலாண்மை இயக்குநர்,
சப்தகிரி மில்க் ப்ராடக்ட்ஸ் லிமிடெட்
அட்சய நகர்
முகாசி புதூர், பவனி

2ம் எதிரியின் தற்காலிக முகவரி
352-A, 2-வது காமதேனு நகர்,
காலிங்கராயன் பாளையம்,
ஈரோடு - 638 316."



20. So this shows that the respondents 1 and 2 impleaded as Managing Director and Joint Director respectively. This practice also deprecated by the Hon'ble Supreme Court in **Aneeta Hada Vs. Godfather Travels and tours Private Limited [(2012) 5 SCC 661]** wherein in similar circumstances arose.

21. For better understanding of the observation of the Hon'ble Supreme Court, para 21, 22 and 39 can be extracted:-

"21. At this juncture, we may refer to [Section 141](#) which deals with offences by companies. As the spine of the controversy rests on the said provision, it is reproduced below:-

*"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



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liable to be proceeded against and punished accordingly.”

22.On a reading of the said provision, it is plain as day that if a person who commits 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.”

....

39.The word 'deemed' used in [Section 141](#) of the Act applies to the company and the persons responsible for the acts of the company. It crystallizes the corporate criminal liability and vicarious liability of a person who is in charge of the company. What averments should be required to make a person vicariously liable has been dealt with in [SMS Pharmaceuticals Ltd.\(supra\)](#). In



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the said case, it has been opined that the criminal liability on account of dishonour of cheque primarily falls on the drawee company and is extended to the officers of the company and as there is a specific provision extending the liability to the officers, the conditions incorporated in [Section 141](#) are to be satisfied."

22.Finally para 53 may also profitably extracted as under:-

"53.It is to be borne in mind that [Section 141](#) of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent [laid down in Section 141](#) of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant."

23.Adhering to the statutory provision is highlighted in para 56 and the principles underling under



section 141 is also highlighted in para 58 and 59, which would run thus:-

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"56.We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in [Section 141](#) of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term "as well as" in the Section is of immense significance and, in its tentacle, it brings in the company as well as the director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the directors or other officers is tenable even if the company is not arraigned as an accused. The words "as well as" have to be understood in the context.

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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 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](#)



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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 51. The decision in Modi Distilleries (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove."

24.This is the settled principle of law. So, no elaboration need be made.

25.Even though, the appellants counsel tries to convince the court that the Director and Joint Director were shown as accused in their capacity as officials of the company, but this will not be sufficient enough to satisfy the requirement of law under section 141 of the Negotiable Instruments Act to sustain the conviction under section 138 of the Negotiable Instruments Act.

26.As held by the Hon'ble Supreme Court, the primary responsibility is upon the company. Unless the company is held responsible, the officials of the company cannot be prosecuted. This is the basic and fundamental principle governing the corporate criminal liability.



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27.As mentioned above, no steps were taken by the complainant to rectify the mistake by impleading the company as a prime accused. So, the complaint itself is illegal and so, the judgment passed by the trial court is perfectly legal, which requires no interference.

28.In the result, all the criminal appeals are **dismissed.**

19/10/2024

Index : Yes/No
Internet : Yes/No
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To,

- 1.The Judicial Magistrate,
Manapparai,
Trichy District.
- 2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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