

Galada Finance Limited Vs M/s. Pukraj Jain and Sons, No. 53, Kalathi Pillai Road, Sowcarpet, Chennai-600079 and Pukraj Jain

Court: Madras High Court

Date of Decision: Nov. 23, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 256
Negotiable Instruments Act, 1881 (NI) â€” Section 138

Hon'ble Judges: Aruna Jagadeesan, J

Bench: Single Bench

Advocate: V. Vijayakumar, for the Appellant;

Final Decision: Allowed

Judgement

Honourable Mr. Justice Aruna Jagadeesan

1. The appellant herein is the complainant in S.T.C. No. 1389 of 2007 and S.T.C. No. 1388 of 2007 dated 23.12.2009 respectively, on the file

of the X Small Causes/Special Metropolitan Magistrate Court, Chennai.

2. These appeals emanate from the criminal complaints filed u/s 138 of the Negotiable Instruments Act against the respondent(s). Before the lower

court, parties were summoned. The learned X Small Causes/Special Metropolitan Magistrate, Chennai, dismissed the complaints, acquitting the

accused u/s 256 of Cr.P.C., for non appearance of the complainant.

3. The respondent has been served privately but inspite of service, the respondent did not appear either in person or through counsel.

4. The learned counsel for the appellant would submit that originally the case was pending before the VIII Metropolitan Magistrate Court and the

same was transferred to the X Small Causes/Special Metropolitan Magistrate Court for disposal. He would submit that the complainant appeared

before the court after issuance of notice and he had filed the process application for fresh summons to the accused on 20.12.2007. He would

submit that on 15.06.2009 i.e., after 18 months, the respondent(s)/accused has appeared before the court and thereafter the case was adjourned

on several hearings and on all those hearings, the absence of the complainant as well as the accused was condoned on the petition being filed by

the respective parties.

5. According to the learned counsel for the appellant/complainant that one Ravi who has filed the complaint and whose statement was taken on

oath at the first instance has left the office and now the complainant's firm is represented by one Om Prakash Sadhu. The said Om Prakash Sadhu

appeared before the court on the date of hearing but the learned Presiding Officer insisted for the appearance of the said Ravi who has originally

filed the complaint. As he had left the firm, he could not appear and represent the firm and therefore, the case was adjourned to 23.12.2009 for

the appearance of Ravi. Even on that day, the firm was represented by Om Prakash Sadhu but however, the learned Presiding Officer ignored his

presence and passed the order stating that the complainant has not appeared before the court deliberately and there was no representation on

behalf of the complainant and dismissed the complaint and thus acquitted the accused.

6. The learned counsel for the appellant would further submit that the learned Presiding Officer dismissed the complaint mechanically without

looking into the above position and other aspects of the case. He would rely upon the decision of the Hon"ble Supreme Court reported in

M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, wherein the Hon"ble Supreme Court referring to the

decision reported in Associated Cement Co. Ltd. Vs. Keshvanand, has observed that no Magistrate shall insist that the particular person whose

statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has further

observed that it is open to the complainant company to seek permission of the court for sending any other person to represent the company in the

court which is stated as follows:-

In the case of Associated Cement Co. Ltd. Vs. Keshvanand, , it has been held by this Court that the complainant has to be a corporeal person

who is capable of making a physical appearance in the court. It has been held that if a complaint is made in the name of a incorporeal person (like

a company or corporation) it is necessary that a natural person represents such juristic person in the court. It is held that the court looks upon the

natural person to be the complainant for all practical purposes. It is held that when the complainant is a body corporate it is the de jure

complainant, and it must necessarily associate a human being as de-facto complaint to represent the former in court proceedings. It has further

been held that no Magistrate shall insist that the particular person whose statement was taken oath at the first instance, alone can continue to

represent the company till the end of the proceedings. It has been held that there may be occasions when different persons can represent the

company. It has been held that there may be occasions when different persons can represent the company. It has been held that it is open to the de

jure complainant company to seek permission of the court for sending any other person to represent the company in the court. Thus, even

presuming, that initially there was no authority, still the Company can, at any stage, rectify that defect. At a subsequent stage the Company can

send a person who is competent to represent the company.

7. Heard the submissions made by the learned counsel for the appellant and perused the impugned order passed by the learned Magistrate.

8. Considering the facts and circumstances of the case and in view of the decision of the Hon"ble Supreme Court cited supra, this Court is of the

view that the order passed by the learned Magistrate is not sustainable. A bare reading of the Section 256 of Cr.P.C., itself obviously reveals that

in the prosecution case, nothing was required to be done by the complainant, especially when the petitioner was duly represented by the Advocate,

then it was imperative upon the Magistrate to form his opinion by taking care of the matter as to whether it was appropriate to dismiss the

complaint.

9. It is well settled by the Hon"ble Supreme Court in Associated Cement Co. Ltd. Vs. Keshvanand, that two constraints are imposed on the court

for exercising the power u/s 256 of Cr.P.C. First is, if the court thinks that in a situation it is proper to adjourn the hearing, then the Magistrate shall

not acquit the accused. Second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day, the

Magistrate has the power to dispense with the attendance and proceed with the case. If the situation does not justify the case being adjourned, the

court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary, then

resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must

therefore, be exercised judicially and fairly without impairing the cause of administrative of criminal justice.

10. The real test in such like matter is always good faith and it would necessarily imply as to whether the complainant was absent for any good

reason or not. There was nothing to indicate any lack of good faith or due diligence on the part of the complainant to prosecute the complaint.

11. If the parameters of the above dictum of law as held by the Hon"ble Supreme Court is applied to this case, the impugned order passed by the

learned Magistrate is ex-facie illegal and not sustainable as there was nothing to indicate that there is lack of good faith or due diligence to

prosecute the complaint. The principles of natural justice requires the court to give opportunity to the parties though they failed to use such

opportunity at times and the party having a fair case should not suffer because of his absence.

In the result, the Criminal Appeals are allowed and the orders passed in S.T.C. No. 1389 of 2007 and S.T.C. No. 1388 of 2007 dated

23.12.2009 respectively, on the file of the X Small Causes/Special Metropolitan Magistrate Court, Chennai is hereby set aside. The complainant is

directed to appear before the trial court within a period of three weeks from the date of receipt of a copy of this order and the learned trial judge is

directed to revive the complaints in question and proceed with the same in accordance with law.