

V. Muthukamara Ramalingam Vs State of Andhra Pradesh and Another

Court: Andhra Pradesh High Court

Date of Decision: March 22, 2002

Acts Referred: Companies Act, 1956 â€” Section 291
Negotiable Instruments Act, 1881 (NI) â€” Section 138, 141

Citation: (2002) 1 ALD(Cri) 896 : (2002) 2 ALT(Cri) 110 : (2003) 114 CompCas 372 : (2004) 55 SCL 543

Hon'ble Judges: C.Y. Somayajulu, J

Bench: Single Bench

Advocate: T. Nagarjuna Reddy, for the Appellant; Public Prosecutor for respondent No. 1 and None, for the Respondent

Final Decision: Dismissed

Judgement

C.Y. Somayajulu, J.

This is a petition to quash the proceedings in C. C. No. 360 of 2001 on the file of the Court of the First Additional

Judicial First Class Magistrate, Proddatur, Cuddapah District, initiated against the petitioner and others for an offence u/s 138 of the Negotiable

Instruments Act, 1881 ("the Act"), by the second respondent on the ground that the cheque issued to it by Velan Textile Ltd. ("the company"), of

which the petitioner and others are directors, were dishonoured and that even after issuing of notice of demand after dishonour, the amount

covered by the dishonoured cheques was not paid.

2. The main contention of learned counsel for the petitioner is that as the complaint does not disclose the specific duties of the petitioner in the

company and his role in the issuing of the cheques, that were dishonoured, and as there is a broad and bold averment that he as one of the

directors of the company is in charge of the day-to-day affairs of the company the petitioner cannot be made liable for an offence u/s 138 of the

Act, by placing strong reliance on Smt. Neeta Bhalla v. S. M. S. Pharmaceuticals Ltd [2002] 111 Comp Cas 793 ; [2002] 1 ALD (Cri.) 225,

where it is held that unless there is a recital indicating the role played by each of the directors of a company, they cannot be made liable for an

offence u/s 138 of the Act on the basis of an omnibus sentence that "the directors are actively in management of the company". He relying on

Renewable Energy Systems Ltd. v. State 2001 2 ALD (Cri.) 701; [2002] 111 Comp Cas 786 ; Jord Engineers India Ltd, v. Nagarjuna Finance

Ltd. [2000] 100 Comp Cas 691 ; ESI Corporation, Hyderabad Vs. J.D. Electronics, Abids, Hyderabad, S. S. Industries and Enterprises Ltd. v.

Birla Finance Ltd. [2001] 1 ALD (Cri.) 757 and Sunil Kumar Chhaparia v. Dakka Eshwaraiah [2001] 1 ALD (Cri.) 633 ; [2002] 108 Comp Cas

687 , contended that the complaint against the petitioner is liable to be quashed.

3. Heard the learned public prosecutor.

4. Section 141 of the Act reads :

Offences by companies.--(1) If the person committing an offence u/s 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. (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 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.

5. Therefore it is clear from the above section that every person, who, at the time when the offence was committed, was in charge of and was

responsible for the conduct of the business of the company and the company also are liable to be proceeded against for the offence under Section,

138 of the Act. The Supreme Court in Anil Hada Vs. Indian Acrylic Limited, , while considering the effect of Section 141 of the Act, held that

three categories of persons, who are brought within the purview of the penal liability through the legal fiction envisaged in Section 141 of the Act

are : (1) The company which committed the offence, (2) Every one who was in charge of and was responsible for the business of the company, (3)

any other person who is a director or a manager or a secretary or officer of the company, with whose connivance or due to whose neglect the

company has committed the offence. Under category 2 of Section 141 of the Act every person, who was in charge of and was responsible for the

business of the company can be proceeded against for an offence u/s 138 of the Act.

6. As per Section 291 of the Companies Act, 1956, all the powers of management of the affairs of the company as vested in the board of

directors ; which is the working organ of a company. The directors of a company, as a board, are exclusively empowered to manage the affairs of

that company and are exclusively responsible for that management. The directors are not only the agents but in some sense and to some extent

would be considered as trustees of the company in which they are directors.

7. The averments in the complaint show that for the cotton bales supplied by the complainant to the company only part payment was made and for

the remaining amount due, with the consent and knowledge of the petitioner and other directors, payment was made through cheques drawn on

Bharat Overseas Bank Ltd., and those cheques were dishonoured. The board of directors of the company are under a legal obligation to make

provision for payment of amount due to the complainant. Therefore the petitioner also, by virtue of his being a director of the company, by virtue of

Section 141 of the Act can be proceeded against by the complainant for an offence u/s 138 of the Act. The petitioner, if during the course of trial,

is able to show that the issuing of cheques and their dishonour took place without his knowledge and consent and that in spite of his exercising due

diligence to prevent the commission of offence, the offence was committed he can be exonerated from the offence.

8. In fact the Supreme Court, while dealing with a case arising under the Pollution Control Act in U. P. Pollution Control Board v. Mohan Meakins

[2000] 101 Comp Cas 278 ; AIR 2000 SC 1456, while considering the question as to whether the directors of a company can be prosecuted for

the offence for violation of the provisions of the Act held that the directors of the company also can be proceeded against, in case the company

violates the provisions of the said Act. The similarity between Section 47 of the Pollution Control Act and Section 141 of the Negotiable

Instruments Act can be seen from the Table below :

Section of the Negotiable Instruments Act Section 47 of the Pollution Control Act

Offences by companies, $\tilde{A} \hat{A} \hat{A} \frac{1}{2}$ (1) If the person Offences by companies. $\tilde{A} \hat{A} \hat{A} \frac{1}{2}$ (1) Wherean

committing an offence under section 138 is a offence under this Act has been committed by a

company, every per-son who, at the time the company every per-son who at the time the

offence was committed, was in charge of, and offence was committed was in charge of, and

was responsible to the company for the con-duct was responsible to the company for the con-duct

of the business of the company, as well as the officer in charge 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 any 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.

(2) Notwithstanding anything contained in sub-section (1), where an 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 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.

As seen from the above it is very clear that both the sections are almost similar with regard to the liability of directors of a company, if in case

offences are by companies. Hence, the ratio in *U. P. Pollution Control Board v. Mohan Meakins Ltd.* [2000] 101 Comp Cas 278 ; AIR 2000 SC

1456 equally applies to the proceeding u/s 138 read with Section 141 of the Act, against a company and its directors. Therefore the burden of

proof would be on the petitioner to establish that he is not responsible for the offence alleged against him. It is not necessary for the complainant to

specifically allege what role the petitioner played in preparing and issuing the cheque for the amount due to it from the company. A complainant in a

case of Section 138 of the Act need not to go to the company and verify what role each director had played in the preparation and issuance of the

cheque for and on behalf of the company for the amount due to it from the debtor company.

9. In view of the binding decision of the Supreme Court in U. P. Pollution Control Board v. Mohan Meakins Ltd. [2000] 101 Comp Cas 278 ;

AIR 2000 SC 1456, the various decisions relied on by learned counsel for petitioner, taking a contra view are not binding on me and in view

thereof and in view of the fact that a specific averment is there in the petition that the petitioner and other directors are also responsible for the day-

to-day affairs of the company, I find no grounds to quash the complaint at this stage. As stated earlier, it is open to the petitioner to establish that in

view of the proviso to Sub-section (1) of Section 141 of the Act, he cannot be said to have committed the offence alleged. Since the petitioner is

alleging that he is not in charge of the affairs of the company in spite of his being a director of the company the burden of proof is on him to

establish the same. Therefore in view of the ratio in M. M. T. C. Ltd. v. Medchl Chemicals and Pharma (P.) Ltd. [2002] 108 Comp Cas 48

merely on the basis of the averments, which have to be established by the petitioner during the course of trial against his complaint, cannot be

quashed.

10. Therefore, the petition is dismissed. The learned Magistrate is directed to dispose of C. C. No. 360 of 2001 as expeditiously as possible, at

any rate before the end of August 2002, uninfluenced by the observations made in this order.