
Satya Prakash Aggarwal and Another Vs S.L. Agrawala and Co.

Criminal M.C. No. 1308 of 2004

Court: Orissa High Court

Date of Decision: July 12, 2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 482#Negotiable Instruments Act, 1881 (NI)
â€” Section 138, 141, 141(1), 141(2)

Citation: (2005) CriLJ 3894

Hon'ble Judges: R.N. Biswal, J

Bench: Single Bench

Advocate: B.P. Das, P.K. Pattnaik and Md. Zamir, for the Appellant; Srimanta Das, Sagram Rath and A. Mohanty, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.N. Biswas, J.

The petitioners have filed this case u/s 482 of Cr. P. C. to quash the Criminal Proceeding initiated against them in I. C. C.

case No. 150 of 2001 pending before the Court of S. D. J. M., Panposh at Udit Nagar, Rourkela.

2. They have been arraigned as accused Nos. 5 and 6 in the aforesaid complaint filed by M/s. S. L. Agrawala & Co., being represented through

its Director, Shri Pawan Kumar Agrawal. As per the case of the complainant Company it carries on business of manufacturing Iron and Steel re-

rolled products. In usual course of business it sold and supplied raw materials to M/s. Mohatta & Heckel Ltd., accused No. 1, from time to time.

In the process the accused Company owed a sum of Rs. 1,06,65,653/- along with interest to the complainant. On 1-10-2001 the accused

Company, through one of its Directors, namely Anand Kumar Mohatta (Accused No. 4) issued a cheque of Rs. 1 crore in favour of the

complainant drawn on Sector-19, Branch of UCO. Bank, Rourkela. The complainant presented the said cheque on 1-10-2001 through its

Director to Sector-19 Branch of UCO. Bank Rourkela, which was dishonoured on 1-10-2001 with the endorsement ""insufficient funds"". On

receipt of the information about the dishonour of cheque the complainant Company through its Advocate issued notice by Registered Post with A.

D. on 17-10-2001 to the accused persons demanding payment of the cheque-amount within 15 days of receipt of the notice. In response to the

notice, the accused Company individually and accused Nos. 3 and 6 jointly replied to the same through their respective advocate, taking false and

evasive pleas to avoid payment. So, the complainant filed the aforesaid complaint making M/s. Mohatta & Heckel Ltd. and five of its Directors on

accusation of offence u/s 138 of the Negotiable Instruments Act (hereinafter referred as N. I. Act). Accused Nos. 5 and 6 have challenged the

maintainability of the complaint case against them as mentioned earlier.

3. Learned counsel for the petitioners submitted that there is no material whatsoever in the complaint petition to show that the petitioners were in

charge of, and were responsible to the accused Company for conduct of its business so as to be vicariously liable for the act or omission of the

company in terms of Section 141(1) of N. I. Act. So, the proceeding for the offence u/s 138 of the N. I. Act initiated against them deserved to be

quashed. Section 141(1) of the N. I. Act reads as follows :--

141. Offences by companies - (1) If the person committing an offence u/s 138 is a company, every person who, at the time of 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"".

4. Learned counsel for the petitioners further submitted that as per this provision, if a company commits an offence u/s 138 of the N. I. Act every

person who, at the time of commission of the offence was in the charge of, and was responsible to the Company for the conduct of its business

shall also be deemed to be guilty of the offence. In the case at hand, admittedly Accused No. 1 is a company. It has not challenged the Criminal

Proceeding initiated against it. To make the petitioners liable for the offence u/s 138 of N. I. Act there must be allegation in the complaint petition

that they were in charge of and were"" responsible to the accused company for the conduct of its business. Learned counsel for the petitioners

further submitted that there is no such allegation in the complaint petition and as such the proceeding against them should be dropped. In support of

his submission he relied upon the decisions in K.P.G. Nair Vs. Jindal Menthol India Ltd., , Smt. Katta Sujatha Vs. Fertilizers and Chem.

Travancore Ltd. and Another, and Monaben Ketanbhai Shah and Another Vs. State of Gujarat and Others,

5. Per contra, learned Counsel for the opposite party Company submitted that it is not required to quote Section 141 of N. I. Act in the complaint

petition. If on reading the complaint petition in whole, it can be inferred that there is a prima facie case against the accused persons for the offence

u/s 138 of N. I. Act the proceeding should continue against them. He further submitted that in Para-8 of the complaint petition it has been

mentioned as follows :--

That the accused Company and other accused persons have failed and neglected to make the payment to the complainant company and did not

discharge their liabilities and have not paid the said sum of Rs. 1,00,000,00/- till date. As such they are jointly and severally liable for the act of the

omission and commission of the offence committed by them u/s 138(c) read with Section 141 of Negotiable Instruments Act.

6. So, as per his submission the accused/petitioners shall be liable for the offence u/s 138 of N. I. Act in terms of Sub-section (2) of Section 141

of the N. I. Act. This sub-section reads as follows :--

(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.

7. In the present case as depicted in the complaint petition, the petitioners were Directors, of the accused-company at the time of commission of

the alleged offence. If in fact they were not directors during the relevant period they can establish it at the time of trial, but not at this stage. As per

the case of the complainant/respondent the offence was committed by the accused company. In para 7 of the complaint petition as quoted above it

has been stated that the accused company and other accused persons failed and neglected to make payment to the complainant company. At the

time of trial it can be known whether negligence can be attributed or not to the petitioners, but not at this stage. So, it cannot be said that even if the

entire allegation made in the complaint petition, as it is, held to be true the petitioners cannot be liable for the offence u/s 138 of N. I. Act. As such

the decision (supra) filed on behalf of the petitioners would not be applicable to the present case.

8. Moreover, in a recent Division Bench decision the Apex Court in the case of S.V. Muzumdar and Others Vs. Gujarat State Fertilizer Co. Ltd.

and Another, held as follows :-- (Para 8 of Cri LJ)

We find that the prayers before the Courts below essentially were to drop the proceedings on the ground that the allegations would not constitute

a foundation for action in terms of Section 141 of the Act. These questions have to be adjudicated at the trial. Whether a person is in charge of or

is responsible to the company for conduct of business is to be adjudicated on the basis of materials to be placed by the parties. Sub-section (2) of

Section 141 is a deeming provision which as noted supra operates in certain specified circumstances. Whether the requirements for application of

the deeming provision exist or not is again a matter for adjudication during trial. Similarly, whether the allegations contained are sufficient to attract

culpability is a matter for adjudication at the trial.

This decision would squarely be applicable to the present case. So I am not inclined to exercise the extraordinary power u/s 482 Cr. P. C.,

bestowed on this Court in favour of the petitioners.

Under such circumstances, the CRLMC is dismissed.