

K. Suresh Vs Lloyds Finance Ltd. and Another

Court: Delhi High Court

Date of Decision: Feb. 7, 2008

Citation: (2008) 3 BC 401 : (2008) ILR Delhi 151 Supp

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: Siddharth Luthra and M.A. Chinnasamy, for the Appellant; U.A. Rana and Arvind Kumar for Respondent Nos. 1, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Muralidhar, J.

The Petitioner in this petition u/s 482 of the Code of Criminal Procedure, 1973 ('CrPC' - $\hat{A}_\zeta \hat{A}_{1/2}$) seeks the quashing of

Criminal Complaint No. 2234 of 2001 titled Lloyds Finance Ltd. v. Madhya Pradesh State Road Transport Corporation and Ors. pending in the

Court of the Metropolitan Magistrate ('MM' - $\hat{A}_\zeta \hat{A}_{1/2}$), New Delhi. The complaint was filed by the Respondent No. 1 against the Madhya Pradesh

State Road Transport Corporation ('MPSRTC' - $\hat{A}_\zeta \hat{A}_{1/2}$) as well as three others including the Petitioner here who is its Managing Director and two

others being the Chief Accounts Officer and the Accounts Officer of MPSRTC. The complaint was for offences under Sections 138 and 141 of

the Negotiable Instruments Act, 1881 ('NI Act' - $\hat{A}_\zeta \hat{A}_{1/2}$) in respect of the dishonor of eleven cheques issued on behalf of the MPSRTC in favor of the

complainant company.

2. Mr. Siddharth Luthra, the learned Senior Counsel, appearing for the Petitioner urged two grounds in support of the prayer for quashing of the

criminal proceedings. The first was that the Petitioner who is an officer of the Indian Administrative Service ('IAS' - $\hat{A}_\zeta \hat{A}_{1/2}$) was nominated by the State

Government of Madhya Pradesh to serve as the Managing Director of the MPSRTC. In terms of Section 43 of the Road Transport Corporation

Act, 1950 ('RTC Act' - $\hat{A}_\zeta \hat{A}_{1/2}$), the Petitioner was a public servant within the meaning of Section 21 of the Indian Penal Code (IPC). Therefore, prior

sanction for prosecuting the Petitioner in terms of Section 197 CrPC was a mandatory requirement before the learned MM could have taken

cognizance of the offences on the basis of the complaint filed by the Respondent. Since the learned MM proceeded to take cognizance without

such sanction having been obtained, the order taking cognizance was unsustainable in law. He relied upon the judgment of the Gauhati High Court

dated 8th August, 2006 in Criminal Revision No. 174 of 2002 K. Suresh v. Arihant Hire-Purchase Co. Ltd. which was a case involving the

Petitioner in his capacity as Managing Director of the MPSRTC for a similar offence u/s 138 NI Act.

3. The second ground urged by Mr. Luthra is that the Petitioner would have the benefit of the second proviso to Section 141 NI Act, which was

inserted with effect from 6th February 2003. The second proviso states that a person who is nominated as a Director of a company by virtue of is

being employed in the said government shall not be liable for any prosecution under Chapter XVII NI Act (which includes Section 138 thereof). It

is submitted that this being a matter of procedure the second proviso to Section 141 would be retrospective.

4. In reply, Mr. U.A. Rana, the learned Advocate appearing for the Respondent No. 1 complainant submits that the issuance of the cheques which

were dishonoured due to insufficient funds could not said to be the performance of any official function of the Managing Director of MPSRTC. He

refers to Section 140 NI Act which categorically states that it would be no defense in a prosecution for the offence u/s 138 that the drawer had no

reason to believe when he issued the cheque that the cheque may be dishonoured on presentment. He sought to distinguish the judgment of the

Gauhati High Court in K. Suresh on the ground that there was no discussion therein of the question whether the Managing Director was, in issuing

the cheques in question, performing an official function or not. Therefore the absence of a prior sanction u/s 197 CrPC would not render the order

taking cognizance bad in law.

5. As regards the second submission of Mr. Luthra concerning the second proviso to Section 141 NI Act, Mr. Rana submits that the amendment

is not intended to apply to the Managing Director of a Corporation, who is obviously in charge of the affairs of the company and responsible to it

for the conduct of its business. That proviso is only intended to apply to Directors nominated by the State Governments or Central Government by

virtue of a certain shareholding in the company. Secondly, he submits that the proviso is prospective and since the cheques in the instant case were

issued much earlier, the Petitioner cannot take advantage of the said second proviso.

6. In order to appreciate the first contention concerning prior sanction for prosecuting the Petitioner, the relevant provisions of the statute in

question may be noticed. Section 43 of the RTC Act reads as under:

43. Directors, officers and other employees of a Corporation to be public servants. All Directors of a Corporation, and all officers and other

employees of a Corporation, whether appointed by the State Government or the Corporation, shall be deemed, when acting or purporting to act in

pursuance of any of the provisions of this Act or of any other law, to be public servants within the meaning of Section 21 of the Indian Penal Code

(45 of 1860).

Further, the borrowing powers of a road transport corporation are specified in Section 26 RTC Act. Therefore, the borrowing of monies and

performing tasks incidental thereto would form part of the official functions of the Corporation. Section 19(2)(d)(f)(g) also indicate that entering

into contracts of hire purchase of vehicles for the MPSRTC and performing acts incidental thereto would be part of the official functions of the

Road Transport Corporation.

7. In *K. Suresh v. Arihant Hire-Purchase Co. Ltd.* (supra), the learned Single Judge of the Gauhati High Court followed the judgment dated 28th

June, 2002 of the Division Bench of that Court which had held that the provisions of Section 197 CrPC are attracted for launching criminal

prosecution u/s 138 NI Act against Directors, officers, employees of a road transport corporation within the meaning of Section 43 RTC Act. The

Division Bench had come to the following conclusions in para 10 of its judgment:

10. Section 26 of the Act of 1950 empowers the Corporation to borrow money from open market for raising its working capital or meeting any

expenditure of capital nature. The background of the case amply demonstrate that the decision taken by the revision petitioners, and the purchase

of vehicles in pursuance of this decision with financial aid from the complainant firm, are acts within the meaning of the provisions of Section 26 of

the Act of 1950. The raising of the working capital from the complainant firm is well covered by the phrase "in the open market" occurring in

Section 26. The Directors, Officers and the employees of the Corporation will be entitled to the protection of Section 197 Cr.P.C. for any offence

committed during the course of above transactions. In the cat at hand, the revision petitioners issued three cheques in the capacity of Directors,

officers and employees of the Corporation. They have prima facie committed an offence for omission, on their part, to ensure adequate balance in

the specified bank account. But the issuance of cheques by the revision petitioners was, at worst, an act purportedly done in the discharge of their

official duties for the purpose of liquidating the debt. For this omission, they may be liable to be prosecuted u/s 138 of the Negotiable Instruments

Act, 1881. However, since the offence, if any, has been committed by the revision petitioners, while purporting to act in discharge of their official

duties in the capacity of Directors/Officers of the Corporation, they would be entitled to the protection u/s 197 Cr.P.C. The question raised in the

revision petition is answered accordingly.

8. This Court while respectfully agreeing with the above conclusions reached by the Division Bench of the Gauhati High Court is of the view that

the Managing Director of a Road Transport Corporation would be performing his official functions, on a day-to-day basis in several spheres and

this might well include the issuance of cheques. In fact in the case on hand, it is not the contention of the complainant that the cheques were in fact

signed by the Managing Director himself. But even if one were to stretch the principle of vicarious liability as contained in Section 141 NI Act, the

Managing Director would in fact be performing only his official functions while issuing cheques for payment of Installments or repayment of loans.

Therefore prior sanction for prosecution of the Managing Director in terms of Section 197 CrPC would be mandatory before the learned MM can

take cognizance of the offence.

9. The question of prior sanction for the purposes of Section 197 CrPC does not get affected by Section 140 of the NI Act. The stage at which

the complainant can invoke Section 140 NI Act to negate a defense of the accused that he had no knowledge when he issued it that the cheque be

dishonoured, has not yet been reached. In other words, the defense an accused may have under the second proviso to Section 141 NI Act and

the negation of such defense by the complainant by invoking Section 140 NI Act are events that would have to await the trial. On the other hand,

the question of obtaining prior sanction to prosecute is at the stage of taking cognizance itself.

10. In that view of the matter, the Petitioner is entitled to succeed on the first submission. It is held that for prosecuting the Petitioner, who is the

Managing Director of the MPSRTC having been appointed to that post in his capacity as an IAS Officer serving the State of Madhya Pradesh,

prior sanction u/s 197 CrPC is mandatory before the cognizance of the offence u/s 138 NI Act can be taken by the learned. Therefore, the order

issued by the learned MM summoning the petitioner is hereby set aside. The complaint will now be listed again before the MM on the date already

fixed before that court. It is open to the Respondent No. 1 complainant to seek prior sanction in accordance with law in terms of Section 197

CrPC for proceeding against the Petitioner in the matter.

11. In view of the decision on the first submission made by the Petitioner, there is no need for this Court to consider the second submission

regarding the applicability of the second proviso to Section 141 NI Act, and the question is, Therefore, left open.

12. The petition is accordingly disposed of with no order as to costs. A certified copy of this order be sent to the concerned court before which

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within five days. Order duty to counsel for the parties.