

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD**

* * * *

HONOURABLE SRI JUSTICE E.V.VENUGOPAL

Criminal Petition No.6371 of 2014

Between:

Sattar Ahmed and another

...Petitioners

v.

The State, rep. by the Public Prosecutor
High Court, Hyderabad and another

...Respondents

JUDGMENT PRONOUNCED ON: 01.08.2023

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : **Yes**

E.V.VENUGOPAL, J

*** THE HON'BLE SRI JUSTICE E.V.VENUGOPAL**
+ Criminal Petition No.6371 of 2014

% 01.08.2023

Between:

Sattar Ahmed and another

...Petitioners

v.

The State, rep. by the Public Prosecutor
High Court, Hyderabad and another

...Respondents

! Counsel for Petitioners : Sri A.Ram Babu

^ Counsel for the respondents : Ms.Chreya, counsel
representing Sri Damodar
Mundra, for R.2

The learned APP for the State-R.1

<GIST:

> HEAD NOTE:

? Cases referred

¹ (2005) 8 SCC 89

² AIR 2022 SC 4883

³ 2022 SCC OnLine SC 579

THE HON'BLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL PETITION No.6371 OF 2014

ORDER:

1 This Criminal Petition is filed under Section 482 Cr.P.C. seeking to quash the proceedings against the petitioners herein who were arrayed as accused Nos.3 and 4 in C.C.No.2333 of 2021 pending on the file of the Court of the X Metropolitan Magistrate, Hyderabad, registered for the offences punishable under Sections 138 and 142 of Negotiable Instruments Act, 1881.

2 Heard Sri A.Ram Babu, learned counsel for the petitioners, the learned Assistant Public Prosecutor for the State and Ms.Shreya, learned counsel representing Sri Damodar Mundra, learned counsel for respondent No.2.

3 Initially the second respondent instituted C.C.No.51 of 2014 on the file of VI Special Magistrate, Hyderabad, which subsequently was transferred to the Court of X Metropolitan Magistrate, Hyderabad where it was numbered as C.C.No.2333 of 2021, which proceedings are now sought for quashing.

4 The very institution of the said case by the second respondent herein was because of the action of the petitioners herein who were partners of the first accused – firm in issuing a cheque in the name of the firm and its consequent dishonour.

5 The facts in nutshell are that the second respondent is doing industrial copper wire business in the name and style of M/s.Pawan Electricals. M/s. Apex Weld Industries, a partnership firm was being run by three persons viz, Faiyaz Ahmed, Sattar Ahmed and Mukaram and they used to purchase material from the second respondent firm regularly on credit basis and were holding a running account with the second respondent firm. During the course of business, the petitioners and another being the partners of their firm M/s. Apex Weld Industries purchased industrial copper wire and became due an amount of Rs.2,55,598/- as on 29.09.2010. Upon persuasion for payment of the above amount, on behalf of the firm, the accused No.2, issued a cheque bearing No.289302 for Rs.1.00 lakh drawn on Axis Bank, Himayathnagar Branch, Hyderabad towards part payment of the outstanding amount. Thereupon, the second respondent deposited the said cheque in his bank for encashment on 19.03.2013 and 28.05.2013, but the same was returned unpaid by the bankers of the petitioners with an endorsement 'insufficient funds'. However, on request of the accused the second respondent once again presented the said cheque on 08.06.2013, but the result was the same. Hence, the second respondent got issued a demand legal notice on 24.06.2013 posted on 25.0.2013, but the same was returned by the postal authority with an endorsement 'left' on 27.06.2013. Therefore, having no other alternative to recover the amount from the accused, the second

respondent lodged a private complaint before the trial Court under Sections 200 Cr.P.C. r/w Sections 138 and 142 of Negotiable Instruments Act, 1881, pendency of which proceedings are impugned in this criminal petition.

6 The learned counsel for the petitioners submitted that the second respondent has not furnished the correct address and particulars of the petitioners in the cause title. However, it is his predominant contention that the alleged transaction was between the second respondent and accused Nos.1 and 2 i.e. the firm and the first partner and that the cheque was duly signed by the second accused on behalf of the first accused being the authorized signatory; the complaint is lacking the allegations that the petitioners herein who are accused Nos.3 and 4 were involved in the day to day business of the firm. By relying on the ratio laid down in ***S.M.S.Pharmaceuticals Ltd., Vs. Neeta Bhalla***¹, the learned counsel for the petitioners submitted that inasmuch as there was no averment in the complaint that the petitioners herein who are accused Nos.2 and 3 were part of the day to day business of the first accused, as contemplated under Section 141 of the N.I. Act, the complaint insofar as the present petitioners is concerned, is not maintainable.

7 On the other hand, the learned counsel for the second respondent contended that since the petitioners who are arrayed as

¹ (2005) 8 SCC 89

accused Nos.3 and 4 are also partners of the first accused firm and they are also responsible for conduct of the day to day business of the company and hence they are liable to be tried for the alleged offence and he relied on the ratio laid down in **S.P. Mani and Mohan Dairy vs. Snehalatha Elangovan²**.

8 The issue involved in the present case is no longer *res integra*. However, to put a quietus to the litigation, this Court is inclined to go into the subject matter of the petition and the relevant provision of law, which read as under:

9 "Section 138:- Dishonour of cheque for insufficiency, etc., of funds in the account -

Where any cheque drawn by a persons on an account maintained by him with a banker for payment of any amount of money to another persons from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless --

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

² AIR 2022 SC 4883

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said account of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

Section 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....

[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. "

It will be seen from the above provisions that Section 138 casts criminal liability punishable with imprisonment or fine or with both on a person who issues a cheque towards discharge of a debt or

liability as a whole or in part and the cheque is dishonoured by the bank on presentation. Section 141 extends such criminal liability in case of a company to every person who at the time of the offence, was in charge of and was responsible for the conduct of the business of the Company. By a deeming provision contained in Section 141 of the Act, such a person is vicariously liable to be held guilty for the offence under Section 138 and punished accordingly. Section 138 is the charging section creating criminal liability in case of dishonour of a cheque and its main ingredients are:

- (i) Issuance of a cheque.
- (ii) Presentation of the cheque
- (iii) Dishonour of the cheque
- (iv) Service of statutory notice on the person sought to be made liable, and
- (v) Non-compliance or non-payment in pursuance of the notice within 15 days of the receipt of the notice.

10 To fasten vicarious criminal liability upon a person connected to a company it is necessary to specifically aver in the complaint under Section 141 of the N.I. Act that at the time the offence was committed, the person accused was in-charge of, and is responsible for the conduct of business of the company. This condition is an essential requirement to file a complaint under Section 141 of the N.I. Act, without which the requirement of Section 141 of the Act cannot be said to be satisfied. However, mere being a director of the company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141

of the N.I.Act is that the person sought to be made liable should be in charge of and responsible for conduct of the day to day business of the company at the relevant point of time. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141 of the N.I.Act. Vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners *qua* the firm.

11 Now, let me see whether the contents of the complaint filed before the learned trial court would satisfy the ingredients of Section 141 of the N.I.Act.

12 In para Nos.1 and 2 of the complaint, the second respondent specifically averred as under:

“.....The accused No.1 herein is a partnership firm represented by the other accused as its partners and they used to purchase the material form the complainant herein regularly on credit basis.....

The complainant further respectfully submits that during the course of business, the accused herein represented by accused Nos.1 to 4 have purchased Industrial Copper Wire”

13 Having regard to the above recitals of the complaint, the second respondent has specifically averred that the petitioners herein who are accused Nos.3 and 4 before the learned court below, being partners of the first accused firm, are in active participation of the business being done on the name of the first accused. In such circumstances, it can safely be inferred that the complaint satisfies

the ingredients of Section 141 of the Negotiable Instruments Act, 1881 to prosecute all the partners of the company for dishonour of the cheque on presentation.

14 *Prima facie*, the complainant averred that the petitioners herein are responsible for the day to day conduct of the business in the first accused firm sufficiently enough to take cognizance of the offence by the learned trial Court. So far as the burden of proof is concerned, the petitioners can demonstrate before the trial Court that they are not responsible for the day to day conduct of the business in the first accused firm to take the same into consideration and this Court sitting under Section 482 Cr.P.C is not inclined to go into that aspect.

15 However, the petitioners took a stand in the present petition that the cheque was given by the second accused in the name of the first accused firm and that the second accused is the signatory of the cheque and hence these petitioners should be exonerated from prosecution. But, as observed above, all the partners who are in active participation of the day to day business of the firm are vicariously responsible for the act done by the other accused. The onus is on the petitioners to prove that they are just figured as partners of the first accused firm but they are not looking after the day to day affairs of the partnership firm, which in the present case is lacking and that the petitioners have not discharged such burden.

16 So far as the other contention of the learned counsel for the petitioners that second respondent has not furnished the correct address and particulars of the petitioners in the cause title, as observed by the Hon'ble Supreme Court in ***Dilip Hariramani vs. Bank of Baroda***³, lapse to make a proper mention in the cause title of the complaint would not by itself dis-entitle the complainant, who has a claim to make and who has entitlement to file a complaint against the partners of the firm.

17 Needless to observe that this Court has not gone into the aspect of whether the cheque was given in discharge of any legally enforceable debt or not; about the genuineness of the transactions between the parties and whether the second respondent has strictly complied with the other requisites contemplated under Section 138 of the N.I.Act, like presentation of the cheque within the statutory time and issuance of statutory notice upon dishonour of the cheque and filing of the complaint within the time. All these aspects are kept open and it is for the learned trial court to look into the matter during the course of trial and adjudication of the case.

18 In the light of the above discussion, this Court is of the considered view that the petitioners have not made out any ground much less any valid ground to quash the proceedings against the petitioners and accordingly, this criminal petition is liable to be dismissed.

³ 2022 SCC OnLine SC 579

19 In the result, the criminal petition is dismissed. As a sequel, miscellaneous petitions, if any, pending in this criminal petition shall also stand dismissed.

E.V.VENUGOPAL, J.

Date:01.08.2023
Kvsn

L.R. Copy

Yes No.