

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

CRIMINAL REVISION CASE No.1395 OF 2019

BETWEEN

Mana Advertising and Entertainment Ltd.,
Rep. by its Managing Director, and
Mana Constructions, Rep. by its Managing
Partner Shri D. Yelleshwara Rao S/o Rangaiah,
Aged 46 years, R/o Manikonda, Hyderabad.

... Petitioner

And

1. M/s. Pallavi Constructions, Rep. by its Managing
Partner P. Chandrasekhar Reddy
2. K. Madhusudhan Reddy, Executive Partner
3. The State of Telangana through Public
Prosecutor, High Court at Hyderabad.

... Respondents

Date of Order Pronounced: **14.08.2023**

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

1. Whether Reporters of Local newspapers may (Yes/No)
be allowed to see the Judgments?
2. Whether the copies of judgment may be (Yes/No)
marked to Law Reports/Journals?
3. Whether their Lordship/ Ladyship wish to (Yes/No) see
the fair copy of the Judgment?

JUSTICE N.TUKARAMJI

Mana Advertising and Entertainment Ltd.,
Rep. by its Managing Director, and
Mana Constructions, Rep. by its Managing
Partner Shri D. Yelleshwara Rao S/o Rangaiah,
Aged 46 years, R/o Manikonda, Hyderabad.

And

1. M/s. Pallavi Constructions, Rep. by its Managing Partner P. Chandrasekhara Reddy
2. K. Madhusudhan Reddy, Executive Partner
3. The State of Telangana through Public Prosecutor, High Court at Hyderabad.

! Counsel for Petitioner: Smt. I. Maamu Vani
^ Counsel for respondents: 1. Mr.Ashok Reddy Kanathala
(for R1 & R2)
2. Public Prosecutor (for R3)

? Cases referred

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

CRIMINAL REVISION CASE No.1395 OF 2019

ORDER:

This Criminal Revision Case is filed challenging the order dated 29.11.2019 passed in CrI.M.P.No.679 of 2019 in C.C.No.223 of 2018 on the file of the XV Special Magistrate, Hyderabad.

2. I have heard Mrs. I.Maamu Vani, learned counsel for the revision petitioner and Mr. A.S.Diwakar, learned counsel representing learned Mr. Ashok Reddy Kanathala, learned counsel for respondent Nos.1 and 2.

3. In the impugned order, the application filed by the revision petitioner/complainant to add one of the partners of the respondent firm as an accused under Section 319 of Cr.P.C., 1973 has been dismissed.

4. The relevant facts in brief are that:-

In a transaction between the revision petitioner/complainant and respondent No.1 firms, the disputed cheque was issued by respondent No.1 and the same was dis-

honoured by the banker. Thereupon the revision petitioner had initiated the proceedings under Section 138 of Negotiable Instruments Act, 1881 (for short “NI Act”). After the trial and hearing, the petition under Section 319 of Cr.P.C. came to be filed with a prayer to add respondent No.2 as an accused. The trial Court in the impugned order held that as the statutory notice was issued on respondent No.1/firm but not on its partners in their individual capacity, and merely referring a person in the cause title would not be sufficient to prosecute that person and as the witnesses were already examined in inquiry adding the accused would cause prejudice and the reason of oversight cannot be accepted at the advanced stage, dismissed the application. Thus, this revision case by the complainant.

5. In revision, learned counsel for the revision petitioner would contend that as the cheque was issued by the firm, showing the managing partner as an accused, the complaint has been filed. Pertinently, the proposed accused is the partner of the firm and also one of the signatory to the cheque, because of that, he should have also been shown as an accused, however,

due to inadvertence, he was not arrayed as an accused. Further pleaded that, except the delay, the other aspects observed by the trial Court are against the dictum of the Supreme Court in *Krishna Texport and Capital Markets Limited v. ILA A. Agarwal and others*¹ and by referring to para Nos.16 to 18 submitted that when the complaint is against the company, separate notices to the directors are not required and such failure will not be observed for liability of prosecution of the directors who are in charge of the affairs of the firm. Thus, prayed for intervention.

6. Learned counsel for respondent No.2 would submit that the application for adding him as an accused was at the fag end of the proceedings and admittedly, the delay explained by the petitioner is oversight and the trial Court had rightly observed that it is unacceptable at this stage. Further, by citing the authority between *Juhru and Ors v. Karim and another*² submitted that the application under Section 319 of Cr.P.C. could be at the stage of enquiry and it should be on the basis of

¹ (2015) 8 SCC 28

evidence adduced during the course of trial. Therefore, the explanation of oversight will not come in aid, as such the revision petitioner shall suffer for his lapse. Thus, the impugned order deserve to be sustained.

7. I have carefully perused the material and the submissions of learned counsel are given due consideration.

8. In regard to the impugned application, the issuance of cheque by the respondent No.1 firm and his position as managing partner and the partnership of respondent No.2 in the firm are not in dispute. Nonetheless the application has been filed at the stage of hearing.

9. Be that as it may, it is evident clear that the managing partner and the respondent No.2 as executive partner had signed the disputed cheque. The managing partner has been arrayed as an accused, showing the firm, albeit the respondent No.2/executive partner was not set out in the complaint. The signature is prima-facie indicating the role of the respondent

No.2 and his active involvement in the affairs of the firm, wherefore he should have been added as the accused in the complaint.

10. Howsoever, non-service of the statutory notice on the respondent No.2 has been considered as primary cause for rejection of the petition. The Hon'ble Supreme Court had an occasion to examine the requirement of service of notice individually on the directors of a company in ***Krishna Texport*** (supra) and in para 18 held as follows:-

“...In our view, Section 138 of the Act does not admit of any necessity or scope for reading into it the requirement that the Directors of the Company in question must also be issued individual notices under Section 138 of the Act. Such Directors who are in charge of affairs of the Company and responsible for the affairs of the Company would be aware of the receipt of notice by the Company under Section 138. Therefore, neither on literal construction nor on the touchstone of purposive construction such requirement could or ought to be read into Section 138 of the Act...”

11. Thus, in the light of above clarification, and explanation (a) and (b) of the Section 141 of the N.I. Act as the body corporate means and includes a firm, non-service of notice on the directors/partner, when the statutory notice has been served on the company/firm should be considered as sufficient service of notice on its directors/partners. Therefore, disregarding the

application of the revision petitioner on this count is unsustainable.

12. The other aspect is delay in filing the application. Section 319 of Cr.P.C. does not contemplate any timeline or the stage by which the application can be moved. Further, the provision is clear as to the steps to be taken by the Court on inclusion of any person as an accused and the procedure contemplated in sub section (4) would secure the interests of respondent No.2 who is proposed accused. Above all, when the material on record is obvious that being executive partner of the firm and signatory of the cheque, axiomatically, the cause in the complaint has been equally existing against the respondent No.2, and in absence of any malafides on the part of revision petitioner in filing the application with delay to subserve substantial justice the delay if any, should not come in the way.

13. For the aforesaid, it shall be held that though the application of the revision petitioner deserves positive consideration, the learned Magistrate failed to properly appreciate the legal position in exercising jurisdiction.

14. In effect, the Revision Petition is allowed and the order dated 29.11.2019 passed in C.C.No.223 of 2018 on the file of the XV Special Magistrate, Hyderabad, is set aside and respondent No.2/proposed accused is impleaded as accused No.2 in the complaint Case.

As a sequel, pending miscellaneous petitions, if any, stands closed.

N. TUKARAMJI, J

Date: 14.08.2023

Note: L.R. Copy to be marked.

B/o. Plp

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

CRIMINAL REVISION CASE No.1395 OF 2019

Date: 14.08.2023.

Plp