

A MALWA COTTON & SPINNING MILLS LTD.

v.

VIRSA SINGH SIDHU & ORS.
(Criminal Appeal No. 1265 of 2008)

AUGUST 13, 2008

B (DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.)

C *Code of Criminal Procedure, 1973; s. 482/Negotiable
Instruments Act, 1881; Ss.138 & 141:*

D *Dishonour of cheques – Accused director allegedly re-
signed before Cheques were issued – Quashing of proceed-
ing against director by High Court in exercise of power under
s. 482 Cr.P.C. – Correctness of – Held: Factual disputes in-
volved – Acceptance of resignation of the director by the com-
pany and effect of delayed intimation about such resignation
to Registrars of Companies are matters in respect of which
evidence has to be led – Under the circumstances, High Court
was not justified in quashing the proceedings.*

E **The question which arose for consideration in these
appeals was as to whether the High Court was justified
in quashing the proceedings against respondent No.1
which was initiated against him under s.138 of the Nego-
tiable Instruments Act for dishonour of Cheques allegedly
F issued by the company, in which respondent No.1 was
working as director. Respondent No.1 allegedly resigned
from directorship of the Company before issuance of the
Cheques.**

G **Appellant contended that respondent No.1 claims to
have resigned before issuance of cheques. However, in-
timation in terms of Form No.32 to the Registrar of Com-
panies was filed much after the cheques were issued; and
that claim of respondent No.1 whether factually correct**

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or not would have been established in trial and the High Court could not have passed the impugned judgment while dealing with the application under Section 482 of the Code of Criminal Procedure, 1973. A

Respondent No.1 submitted that the High Court was justified in its view that respondent No.1 had intimated the company about his desire to resign. If the company delayed in submitting the requisite form before the Registrar of Companies, he cannot be made to suffer. B

Allowing the appeals, the Court C

HELD: Factual disputes are involved. What was the effect of delayed presentation before the Registrar of Companies is essentially a matter of trial. Whether respondent No.1 had intimated the company and whether there was any resolution accepting his resignation are matters in respect of which evidence has to be led. Therefore, the High Court was not justified in its view. So far as allegations against the Directors are concerned about their position in the company the complaint specifically contained the averments regarding the position of the accused Directors in the company. Therefore, the High Court was not justified in quashing the proceedings against respondent No.1. (Paras – 6, 7 & 11) [71,E-F; 75,D] D E

S.V. Muzumdar v. Gujarat State Fertilizer Co. Ltd. and Anr. (2005) 4 SCC 173 and *N. Rangachari v. Bharat Sanchar Nigam Ltd.* (2007) 5 SCC 108 – relied on. F

Case Law Reference

(2005) 4 SCC 173 Relied on Para – 9

(2007) 5 SCC 108 Relied on Para – 10 G

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 1265 of 2008

From the final Order dated 10.2.2005 of the High Court of Punjab and Haryana at Chandigarh in CrI. Misc. No. 52153-M/2002 H

A WITH

Criminal Appeal Nos. 1266, 1267, 1268, 1269, 1270, 1271 and 1272 of 2008

B Sanjay Kapur, Shubhra Kapur, Rajiv Kapur and Arti Singh for the Appellant.

P.P. Singh for the Respondents.

The Judgment of the Court was delivered by

C **Dr. ARIJIT PASAYAT, J.**

SLP (Cri.) 6049/2005

1. Leave granted.

D 2. Challenge in this appeal is to the order passed by a learned Single Judge of the Punjab and Haryana High Court accepting the prayer of respondent No.1 for quashing the proceedings pending before the Judicial Magistrate, First Class, Ludhiana. The proceedings related to the complaint filed by the appellant alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short the 'Act'). In all, 8 petitions were filed which were disposed of by the common judgment.

E 3. The present appeals relate to Criminal Miscellaneous No.52153 of 2002 and connected cases. The High Court quashed the proceedings primarily on the ground that respondent No.1-Virsa Singh Sidhu in the first case had resigned from the Directorship before the cheques were issued. The other petitions were allowed on the ground that there were some general allegations that all Directors were responsible.

F 4. Learned counsel for the appellant submitted that the High Court's judgment is clearly unsustainable. So far as respondent No.1 is concerned he claims to have resigned on 2.4.1999 whereas cheques were issued on various dates vis in December 2000 and February 2001. It is pointed out that the Form No.32 which was required to be filed with the Registrar of

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Companies was filed on 5.7.2001 i.e. much after the cheques were issued. Whether in fact the respondent No.1's claim to have resigned was factually correct would have been established in trial and the High Court could not have passed the impugned judgment while dealing with the application under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code')? It is further pointed out that the High Court was not justified in holding that there was no specific allegation against other accused persons. With reference to the complaint it was pointed out that specific allegation is to the effect that the accused persons were in charge of day to day management work. In any event, this is not a question which could have been gone into in a proceeding under Section 482 of Code. It is a matter of trial.

5. Learned counsel for respondent No.1 on the other hand submitted that the High Court was justified in its view that respondent No.1 had intimated the company about his desire to resign. If the company delayed in submitting the requisite form before the Registrar of Companies, he cannot be made to suffer.

6. As rightly contended by learned counsel for the appellant factual disputes are involved. What was the effect of delayed presentation before the Registrar of Companies is essentially a matter of trial. Whether respondent No.1 had intimated the company and whether there was any resolution accepting his resignation are matters in respect of which evidence has to be led. Therefore, the High Court was not justified in its view.

7. So far as allegations against the Directors are concerned about their position in the company the complaint specifically contained the averments regarding the position of the accused Directors in the company.

8. At this juncture, it would be relevant to take note of certain observations made by this Court in various cases.

9. In *S.V. Muzumdar v. Gujarat State Fertilizer Co. Ltd. and Anr.* (2005 (4) SCC 173), it was inter-alia observed as follows:

A "3. The facts as projected by the respondents in the
complaint were to the effect that the respondent no.1
B (hereinafter referred to as the 'complainant') supplied
goods on credit to M/s Garware Nylons Ltd. (hereinafter
referred to as the 'Company') (accused no.14). Cheques
C issued by the company were not honoured by the drawee
bank on the ground of insufficient funds. Payments were
not made even after legal notices. There were 14 accused
D persons including the company named in the complaint.
Some of the accused persons were Directors and while
E others were employees. Learned Chief Judicial
Magistrate, Vadodara after recording statement of
F marketing manager who had filed the complaint for himself
and on behalf of the complainant-company, issued
summons to all the accused persons for facing trial for
G alleged commission of offences punishable under Section
138 of the Act read with Sections 420 and 114 of the
Indian Penal Code, 1860 (in short the 'IPC'). The order
H issuing summons was challenged by filing criminal revision
applications which were dismissed by order dated
21.3.1996. Said common judgment and order was
challenged before the High Court by filing special criminal
applications and these applications were permitted to be
withdrawn to enable the appellants to move applications
before the learned Chief Judicial Magistrate as stated by
the petitioners. Application was filed with prayer to drop
proceedings. That application was rejected by order dated
21.8.1997. Same was questioned before the High Court.
The challenge before the High Court was primarily on the
ground that there was no material to show that the accused
persons at the time of offence as allegedly committed
were in charge and/or responsible to the company for the
conduct of the business as required under Section 141(1)
of the Act. It was also submitted that the deeming provision
under sub-section (2) of Section 141 which covers persons
with whose consent or connivance or any attributable
negligence for commission of the offence by the company

was also not applicable. The High Court did not accept the pleas and held that the controversy was to be adjudicated at the trial. It considered the petition to be unacceptable attempt to stall the criminal proceedings at the threshold.

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8. 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 the 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.

9. Under Scheme of the Act, if the person committing an offence under Section 138 of the Act is a company, by application of Section 141 it is deemed that every person who is in charge of and responsible to the company for conduct of the business of the company as well as the company are guilty of the offence. A person who proves that the offence was committed without his knowledge or that he had exercised all due diligence is exempted from becoming liable by operation of the proviso to sub-section (1). The burden in this regard has to be discharged by the accused.

10. The three categories of persons covered by Section 141 are as follows:

(1) The company who committed the offence.

- A (2) Everyone 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
- B has committed the offence.

C 11. Whether or not the evidence to be led would establish the accusations is a matter for trial. It needs no reiteration that proviso to sub-section (1) of Section 141 enables the accused to prove his innocence by discharging the burden which lies on him.”

10. In *N. Rangachari v. Bharat Sanchar Nigam Ltd.* (2007 (5) SCC 108), it was observed as follows:

D “19. Therefore, a person in the commercial world having a transaction with a company is entitled to presume that the Directors of the company are in charge of the affairs of the company. If any restrictions on their powers are placed by the memorandum or articles of the company, it is for the Directors to establish it at the trial. It is in that

E context that Section 141 of the Negotiable Instruments Act provides that when the offender is a company, every person, who at the time when the offence was committed was in charge of and was responsible to the company for the

F conduct of the business of the company, shall also be deemed to be guilty of the offence along with the company. It appears to us that an allegation in the complaint that the named accused are Directors of the company itself would usher in the element of their acting for and on behalf of the company and of their being in charge of the company. In

G *Gower and Davies' Principles of Modern Company Law* (17th Edn.), the theory behind the idea of identification is traced as follows:

H “It is possible to find in the cases varying formulations of the underlying principle, and the most recent

definitions suggest that the courts are prepared today to give the rule of attribution based on identification a somewhat broader scope. In the original formulation in *Lennard's Carrying Company case (1915 AC 705 (HL))* Lord Haldane based identification on a person 'who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation'. Recently, however, such an approach has been castigated by the Privy Council through Lord Hoffmann in *Meridian Global case (1995 (2) AC 500 (PC))* as a misleading 'general metaphysic of companies'. The true question in each case was who as a matter of construction of the statute in question, or presumably other rule of law, is to be regarded as the controller of the company for the purpose of the identification rule." A
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11. Therefore, the High Court was not justified in quashing the proceedings so far as respondent No.1 in the first case is concerned. The appeal is allowed.

12. In view of the order passed in Criminal Appeal arising out of SLP (Crl.) No.6049/2005, where details have been indicated, other appeals deserved to be allowed. The impugned order of the High Court in each case is set aside. E

S.K.S.

Appeals allowed.