

A M/S GREEN EARTH ASPHALT & POWER P. LTD.

v.

STATE OF MAHARASHTRA TR. P.S.O. & ORS.

(Criminal Appeal No. 1310 of 2008)

AUGUST 13, 2008

B

[S.B. SINHA AND AFTAB ALAM, JJ]

Code of Criminal Procedure, 1973:

C s. 482 – *Quashing of criminal proceedings – Complaint u/s 141 of Negotiable Instruments Act against a firm and its partners – HELD: Criminal proceedings could have been quashed as against those partners against whom no averments necessary to rope them were made in the complaint, but not against the firm and its authorized signatory who signed the cheque in that capacity – Order of High Court modified accordingly – Negotiable Instruments Act, 1881 – s.141 – Constitution of India, 1950 – Articles 226 and 227.*

D

E SMS Pharmaceuticals Ltd. vs. Neeta Bhalla and Anr. 2005 (3) Suppl. SCR 371 = (2005) 8 SCC 89 – relied on.

E

Case Law Reference:

2005 (3) Suppl. SCR 371 relied on para 6

F

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 1310 of 2008

From the final Judgment and Order dated 12.7.2006 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Application No. 873 of 2006

G

Subramonium Prasad for the Appellant.

Ravindra Keshavrao Adsure, Rana S. Biswas, Mirdul Chakraborty and Sarla Chandra for the Respondents.

The following Order of the Court was delivered

H

Leave granted.

This appeal is directed against the judgment and order dated 12.7.2006 passed by the High court of Judicature at Bombay, Nagpur Bench, Nagpur in Criminal Application No. 873 of 2006 whereby and whereunder the application filed by the respondents herein under Section 482 of the Code of Criminal Procedure and Articles 226 and 227 of the Constitution of India for quashing the Summary Criminal Case No. 72/2005 pending before the Court of Judicial Magistrate, First Class, Acjhalpur was allowed.

The High Court in its judgment opined that in terms of Section 141 of the Negotiable Instruments Act only those partners of a Firm can be proceeded, who were in-charge of the affairs of the Company and responsible to it. No exception can be taken to the aforesaid proposition of law. No exception can also be taken to the observations of the High Court that every partner of the Firm cannot automatically be roped in.

But then the High Court despite the aforesaid observations has quashed the entire criminal proceeding,

inter alia, on the premise that no averment in terms of Section 141 of the Negotiable Instruments Act has been made in the complaint petition.

Section 141 of the Negotiable Instruments Act raises a legal fiction in terms whereof the Directors of a Company which would include the partners of a Firm would be deemed to have committed an offence along with the Company if they are in-charge of the affairs of the Company and responsible to it.

It is not in dispute that the respondent No.3 was the authorised signatory of the Company and in that capacity he has signed the cheque. Respondent No.2 is the Firm.

In that view of the matter the averments which were necessary to be made to rope in respondent Nos. 4 and 5 herein having not been made, the criminal proceeding could have been

A quashed against them but not against the respondent Nos. 2 and 3. This aspect of the matter is squarely covered by a decision of this Court in *S M S Pharmaceuticals Ltd. Vs. Neeta Bhalla and Anr.* -(2005) 8 SCC 89.

B For the aforesaid reasons, the appeal is allowed in part. The judgment of the High Court is set aside so far as involvement of respondent Nos. 2 and 3 is concerned. However, the judgment of the High Court is upheld so far as respondent Nos. 4 and 5 are concerned.

R.P.

Appeal partly allowed.