

SUPREME COURT OF INDIA

Central Bank of India

Vs.

Asian Global Ltd.

S.L.P. (Crl.) No.5093 of 2008

(Altamas Kabir and Cyriac Joseph JJ.)

06.07.2010

JUDGEMENT

Altamas Kabir, J.

1. Special Leave Petition (Crl.) No.5093 of 2008, has been filed by the Central Bank of India against the judgment and order dated 22.8.2007 passed by the Delhi High Court in Crl. M.C. No.5167 of 2003 allowing the said petition under Section 482 Cr.P.C. filed by the Respondents and discharging them and quashing the complaint filed by the Petitioner Bank and the process issued thereupon.

“By the said judgment, three other petitions, being Crl. M.C. No.5161 of 2003, Crl. M.C. No.5162 of 2003 and Crl. M.C. No.2166 of 2003, were also disposed of in favour of the Respondent Nos.1 and 2, M/s Asian Global Ltd. and its Director, Mr. Rajiv Jain. Several other petitions filed by Sarla Jain, a Director of the Respondent No.1 Company, also challenging the complaint filed by the Petitioner Bank and praying for discharge therefrom and quashing thereof, were allowed by the aforesaid judgment. Consequently, the Bank has also filed SLP (Crl.) Nos.5094, 5095 and 5096 of 2008, which are also being heard along with SLP(Crl.)No.5093 of 2008.”

2. The facts as disclosed indicate that in 1993 the Respondent No.1 had availed of various credit facilities from the Petitioner Bank, including packing credit facility and overdraft facility.

“For whatever reason, the account of the Respondent No.1 is alleged to have become irregular compelling the Bank to call upon the Respondent No.1 Company to regularize its packing credit account. It appears that corporate guarantee for due repayment of the outstanding dues of the Respondent No.1 Company was given by the Respondent No.3 Company which was allegedly a sister concern of the Respondent No.1 and the Respondent No.2 while being a Director of Respondent No.1 Company was a Joint Managing Director of the Respondent No.3 Company.”

3. In order to discharge its liability to the Petitioner Bank, the Respondent No.3 Company issued Cheque No.255242 dated 16.5.1996, along with three other cheques, each for a sum of Rs.5 lakhs in favour of the Respondent No.1 Company which was deposited by the Respondent No.1 Company with the Petitioner Bank towards the outstanding dues of the Respondent No.1 Company. On being presented for encashment on 16.5.1996, the said cheques were returned to the Petitioner Bank with the remarks "funds insufficient". On the request made by the Respondents, the cheque was again presented for payment on 31.7.1996, but was again returned by the New Delhi Gulmohar Park Branch of the Petitioner Bank with the remark "since account closed". It is only thereafter that the Petitioner Bank filed a complaint against the Respondents under Sections 138 and 139 of the Negotiable Instruments Act, 1881, read with Section 120-B and 420 I.P.C., upon which cognizance was taken by the Additional Chief Metropolitan Magistrate, Patiala House, New Delhi, on 27.1.2001.

4. Aggrieved by the order issuing summons, the Respondent Nos.1 to 3 and other accused persons, being the Directors of the Respondent Nos.1 to 3 Companies, moved an application under Section 245(2) Cr.P.C. praying for recall of the order issuing summons and consequent discharge from the criminal proceedings initiated on the complaint filed by the Petitioner Bank on the ground that there was no privity of contract between the Petitioner Bank and the Respondent No.3, Asian Consolidated Industries Ltd. (ACIL). On the other hand, the Petitioner Bank took the stand that being a "holder in due course", the Bank was entitled to maintain its complaint.

5. By its order dated 28.7.2003 the Trial Court rejected the application filed by the Respondents for discharge upon holding that under Section 118(E) of the Negotiable Instruments Act, 1881, hereinafter referred to as "the 1881 Act", a "holder" of a cheque is presumed to be a "holder in due course" unless and until the contrary is proved by the accused.

6. Being aggrieved by the said order dated 28.7.2003, the Respondent Nos.1 and 2 moved the Delhi High Court under Section 482 Cr.P.C. in Crl. M.C. No.5167 of 2003. As indicated hereinbefore, separate petitions were filed, being Crl. M.C. No.5161 of 2003, Crl. M.C. No.5162 of 2003 and Crl. M.C. No.2166 of 2003, which were heard and disposed of in favour of the Respondent Nos.1 and 2 by the learned Single Judge of the Delhi High Court by discharging the respondents and quashing the complaint and the orders issuing summons.

7. It is against the said order of the High Court that the present Special Leave Petitions have been filed by the Central Bank of India.

8. On behalf of the Petitioner Bank it was submitted that the High Court had misconstrued the provisions of Sub-Section (1) of Section 141 of the 1881 Act, which merely provide that if a person committing an offence under Section 138 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 conduct of the business of the Company, as well as the Company, shall be

deemed guilty of the offence. It was urged that the High Court had wrongly interpreted the provisions of Sub-section (1) of Section 141 of the aforesaid Act in their application to the statements made in paragraphs 12 and 21 of the complaint in arriving at a finding that the complaint had merely presumed that the Directors would be guilty because of holding a particular office since law would assume so. It was submitted that while correctly holding that to fasten liability on a Director it has to be proved that such Director was responsible to the Company and was in charge of its affairs and that such fact would have to be pleaded and proved, the High Court had erred in holding that the pleadings in paragraphs 12 and 21 of the complaint fell short of sufficient averments required to be made in a complaint under Section 138 read with Section 141 of the 1881 Act.

9. It was submitted that the decision of this Court in *S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla & Anr.*¹ did not affect the Bank's case, since it had been stated in the complaint in clear and unambiguous terms that the respondents as Directors of the Company were liable for its acts and that such an allegation could be proved by leading evidence, which stage was yet to arrive when the High Court quashed the complaint and discharged the accused. It was submitted that the impugned order of the High Court was liable to be set aside and the matter was liable to be remanded to the Trial Court for being proceeded with from the stage when the complaint was quashed.

10. Apart from the above submissions, a further submission was made on behalf of the Bank to the effect that since the cheques which were issued in favour of the Bank had been handed over by the Respondent No.1 for collection and had been dishonoured, the Bank had become the holder of the cheques in due course and were, therefore, entitled to proceed against the Respondent No.1.

11. The submissions made on behalf of the Petitioner Bank were strongly opposed on behalf of the respondents and it was submitted that having regard to the decision of this Court in *S.M.S. Pharmaceuticals Ltd.'s case (supra)* which was later followed in *N.K. Wahi vs. Shekhar Singh & Ors.*² there was no scope to urge that the ingredients of a complaint against the respondents had been satisfied by the averments made in paragraphs 12 and 21 of the complaint.

12. As far as the second limb of the submissions made on behalf of the Bank was concerned, it was submitted that the same was an argument of desperation as the cheques in question had been drawn by the Respondent No.3 on its own Bank which had dishonoured the cheques. Except for presenting the cheques to the Bank for collection, the Respondent No.1 had no other role to play in the dishonour thereof.

13. We have carefully considered the submissions made on behalf of the respective parties and we are unable to persuade ourselves to differ with the judgment and order of the High Court. The judgment in *S.M.S. Pharmaceuticals Ltd.'s case (supra)*, which was relied upon by the High Court, while interpreting the provisions of sub-section (1) of Section 141 of the 1881 Act, made it very clear that unless a specific averment was made in the complaint that

at the time when the offence was committed, the person accused was in charge of and responsible for the conduct of the business of the Company, the requirements of Section 141 would not be satisfied. It was further held that while a Managing Director or a Joint Director of the Company would be admittedly in charge of the Company and responsible to the Company for the conduct of its business, the same yardstick would not apply to a Director. The position of a signatory to a cheque would be different in terms of Sub-section (2) of Section 141 of the 1881 Act.

That, of course, is not the fact in this case.

14. The law as laid down in S.M.S. Pharmaceuticals Ltd. 's case (supra) has been consistently followed and as late as in 2007, this Court in the case of N.K. Wahi's case (supra), while considering the question of vicarious liability of a Director of a Company, reiterated the sentiments expressed in S.M.S. Pharmaceuticals Ltd.'s case (supra) that merely being a Director would not make a person liable for an offence that may have been committed by the Company. For launching a prosecution against the Directors of a Company under Section 138 read with Section 141 of the 1881 Act, there had to be a specific allegation in the complaint in regard to the part played by them in the transaction in question. It was also laid down that the allegations had to be clear and unambiguous showing that the Directors were in charge of and responsible for the business of the Company. This was done to discourage frivolous litigation and to prevent abuse of the process of Court and from embarking on a fishing expedition to try and unearth material against the Director concerned.

15. In this case, save and except for the statement that the Respondents, Mr. Rajiv Jain and Sarla Jain and some of the other accused, were Directors of the accused Companies and were responsible and liable for the acts of the said Companies, no specific allegation has been made against any of them. The question of proving a fact which had not been mentioned in the complaint did not, therefore, arise in the facts of this case. This has prompted the High Court to observe that the Bank had relied on the mistaken presumption that as Directors, Rajiv Jain, Sarla Jain and the other Directors were vicariously liable for the acts of the Company.

“Admittedly, except for the aforesaid statement, no other material has been disclosed in the complaint to make out a case against the respondents that they had been in charge of the affairs of the Company and were responsible for its action. The High Court, therefore, rightly held that in the absence of any specific charge against the Respondents, the complaint was liable to be quashed and the respondents were liable to be discharged.”

16. As to the submission made on behalf of the Bank that they were holders in due course of the four cheques issued by the Respondent No.3 Company and that by presenting them to the Petitioner Bank for encashment, the Respondent No.1 Company had become liable for dishonour thereof, has been adequately dealt with and negated by the High Court and does not require any further elaboration.

17. The Special Leave Petitions filed by the Central Bank of India, therefore, fail and are dismissed.

¹(2005) 8 SCC 89
²(2007) 9 SCC 481