

SUPREME COURT OF INDIA

Mannalal Chamaria

Vs.

State of West Bengal

Crl.A.No.213 of 2006

(Ranjana Prakash Desai and Madan B. Lokur JJ.)

25.03.2014

JUDGMENT

MADAN B. LOKUR, J.

1. The question arising for consideration in these appeals relates to the alleged failure (and consequential effect) of Pradip Sarkar to specifically state in his complaint filed under Sections 138 and 141 of the Negotiable Instruments Act, 1881 that the appellants/accused persons were in charge of and responsible for the conduct of the business of M/s. Heritage Herbs Ltd. of which they were said to be Directors.

2. In a complaint filed on 31st March, 2001, Pradip Sarkar alleged that Heritage Herbs had made an offer for collecting money from the market with a view to allot land to the intending investors. On the basis of the offer made, Pradip Sarkar invested an amount of Rs.1,50,000/- and Heritage Herbs issued three receipt-cum-allotment letters for three plots of land to Pradip Sarkar. At the time of handing over the receipt-cum-allotment letters, Pradip Sarkar was also handed over three cheques of Rs. 61,000/- each post dated to 29th October, 2000. These cheques were issued by Heritage Herbs and were signed by Raj Kumar Chamaria as Chairman of the said concern.

3. All the three cheques were deposited by Pradip Sarkar but were dishonoured by the concerned bank. This led Pradip Sarkar to take steps to issue a notice to and initiate proceedings against Heritage Herbs and Raj Kumar Chamaria under the provisions of

Section 138 read with Section 141 of the Negotiable Instruments Act, 1881.

4. During the pendency of the proceedings Raj Kumar Chamaria died on 10th December, 2003.

5. Thereafter, Pradip Sarkar moved an application for impleading the appellants as accused persons. The application was allowed and the appellants were impleaded as accused persons by the concerned Magistrate by an order dated 28th April, 2004 and summons issued to them.

6. Feeling aggrieved by their impleadment and summons issued to them, the appellants preferred Criminal Revision Petitions in the Calcutta High Court, which dismissed the petitions.

7. The appellants have challenged the order of the Calcutta High Court and the only contention urged is that no specific allegations were made against them either in the complaint as originally filed on 31st March, 2001 or in the amended complaint filed on 28th April 2004.

8. We have been taken through both the complaints by learned counsel for the appellants and find that there is no allegation worth the name against any of the appellants in either of the complaints. Insofar as the first complaint is concerned, the appellants were not even made parties and therefore there is no question of any allegations being made against them in that complaint. As far as the second complaint is concerned, the only allegation made is to be found in paragraph 6 thereof which reads as follows:-

“That in this context your petitioner refers to the provisions of Section 141 of the Negotiable Instrument Act, where it has been specifically stated that if the offender is the company then the person who at the time of the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, other Directors, Manager, Secretary or other officers of the company shall be guilty of the offence, unless the persons referred to above prove otherwise, as per the saving clause of the said section. In section 5 of the Companies Act, also made those officers responsible for crime committed by the company.”

9. The law on the subject is now very well-settled by a series of decisions rendered by this Court and it is not necessary to repeat the views expressed time and again. Suffice it to say, that the law has once again been stated in *A.K.Singhania vs. Gujarat State Fertilizer Company Ltd.*[1] to the effect that it is necessary for a complainant to state in the complaint that the person accused was in charge of and responsible for the conduct of the business of the company. Although, no particular form for making such an allegation is prescribed, and it may not be necessary to reproduce the language of Section 138 of the Negotiable Instruments Act, 1881, but a reading of the complaint should show that the substance of the accusation discloses that the accused person was in charge of and responsible for the conduct of the business of the company at the relevant time. From the averment made in the complaint, which is reproduced above, it can safely be said that there is no specific or even a general allegation made against the appellants.

10. Under these circumstances, the complaint against the appellants deserves dismissal. A contrary view taken by the High Court cannot be accepted. Accordingly, the appeals are allowed and the order passed by the High Court is set aside.