

**SUPREME COURT OF INDIA**

Tamil Nadu News Print & Papers Ltd.

Vs.

D.Karunakar & Ors.

Crl.A.No.1846-1847 of 2008

(Anil R.Dave and Kurian Joseh,JJ.,)

10.08.2015

**JUDGMENT**

**Anil R.Dave,J.,**

1. In these appeals, the order dated 12th April, 2007, passed by the High Court of judicature at Madras in Crl. O.P.Nos. 1222 & 4098 of 2007 and Crl. M.P. No. 1 of 2007, has been challenged.
2. By virtue of the impugned order, the High Court has allowed the petitions filed under the provisions of Section 482 of the Code of Criminal Procedure, whereby proceedings in pursuance of C.C. No. 3022 of 2000 on the file of learned IX Metropolitan Magistrate, Saidpet, Chennai in respect of some of the accused have been quashed.
3. The facts giving rise to the present appeals, in a nutshell, are as under :- The appellant is a company manufacturing news prints and papers. It had business dealings with M/s Manito Electronics Pvt. Ltd., Accused No.1, a company of which Accused Nos. 2 to 9 were the Directors. Though, all the accused had not filed quashing petitions, the High Court has quashed the proceedings in respect of all the accused, other than Accused No. 1, which is the company and Accused No. 2, who was the Managing Director of the company, who had issued the cheque. A cheque for Rs.57,68,524/- (Fifty Seven Lakhs Sixty Eight Thousand Five Hundred and Twenty Four) had been issued on behalf of Accused No. 1 company by Accused No. 2, the Managing Director to the appellant company. As the cheque had not been honoured and in spite of a statutory notice issued, no amount in respect of the said cheque had been paid to the present appellant, a complaint, being CC No. 3022 of 2000 had been filed in the Court of IX Metropolitan Magistrate, Saidpet, Chennai.
4. The present respondents had filed two petitions under Section 482 of the Code of Criminal Procedure for quashing the said complaint, which the High Court has allowed to the limited extent, as stated hereinabove.

5. The present appellant, in whose favour the cheque had been issued by Accused No. 2, on behalf of Accused No.1 Company, has been aggrieved by the order whereby the proceedings have been quashed in part by the High Court and therefore, the present appeals have been filed by the complainant.

6. Though served, no one has appeared on behalf of the respondents. It appears from the record that notice issued to Accused No.1 Company was refused and whereabouts of all the Directors could not be known. In these circumstances, a paper publication was effected yet none has appeared for the respondents.

7. It has been submitted by the learned counsel appearing for the appellant that the High Court was not right in quashing the proceedings in part so far as Accused Nos.3 to 10 are concerned. He has referred to Section 141(1) of the Negotiable Instruments Act, 1881 (hereinafter referred to as, "the Act"), which reads as under :-

"141(1) If the person committing an offence under Section 138 is a company, every person who, at the time 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 to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence :

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter."

(Emphasis supplied)

8. It has been submitted by the learned counsel for the appellant that in the complaint, an averment has been made to the effect that all the accused were Directors and incharge of day-to-day business of Accused No. 1 - Company and therefore, they are liable to be punished under the provisions of Section 138 of the Act.

9. It has been further submitted by the learned counsel for the appellant that the High Court is not right when it has observed in paragraph 7 of the impugned order that "the complainant has not whispered a word about the position held by the petitioners herein and there is not even a single statement to the effect that the petitioners are the Directors and as such they are in charge of the day to day business of A1, the Company. It is merely stated that A3 to A9 are involved and in charge of the business of A1, the Company."

10. The learned counsel has drawn our attention to the Judgment delivered by this Court in the case of *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another reported in'*. Paragraph 19(a) of the Judgment reads as under :-

"19(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint....."

11. The learned counsel has also submitted that, in fact, an averment had been made in the complaint that Accused Nos. 2 to 9 were Directors and were in day to day management of the accused company. In spite of the aforesaid fact, the High Court has made the aforesaid observation that there was no such averment made against Accused Nos. 3 to 10. According to him, the said view of the High Court is not correct and therefore, this criminal appeal deserves to be allowed.

12. We have carefully gone through the impugned order passed by the High Court and the complaint filed on behalf of the appellant.

13. Upon perusal of the complaint, we find that an averment has been made to the effect that Accused Nos. 3 to 10 were, in fact, in-charge of the day- to-day business of Accused No. 1 - company.

14. It is an admitted position that simply because someone is a Director in a company, he cannot be held responsible in respect of a cheque issued on behalf of the company, but if the concerned Director is in-charge of and is responsible to the company for its conduct of business, he can be held to be guilty of the offence under Section 138 of the Act and therefore, the High Court ought not to have quashed the proceedings against such directors.

15. In our opinion, the High Court has committed an error by making an observation that not a single statement was made in the complaint to the effect that Accused Nos. 3 to 10 were in-charge of the day-to-day business of Accused No. 1 - company.

16. It is also pertinent to note that on behalf of the accused company notice was refused and whereabouts of all the Directors are not known. Notices served upon them in normal course could not be served and therefore, by way of substituted service, a paper publication was made and an affidavit giving details about the publication has been placed on record of this Court. In spite of the said fact, no body has appeared on behalf of the respondents. This fact also indicates the intention of the accused.

17. For the reasons stated hereinabove, in our opinion, as there was an allegation to the effect that Accused Nos. 2 to 10 were involved in day-to- day business of Accused No. 1 - company, we see no reason for sparing them by the High Court.

18. In these circumstances, the impugned order passed by the High Court is set aside and the Criminal Appeals are allowed.

19. It is also directed that the proceedings shall commence as soon as possible so that they can come to an end at an early date.

20. The Registry is directed to send an intimation of this order to IX Metropolitan Magistrate, Saidpet, Chennai. Record and proceedings, if sent to this Court, be returned forthwith.