

G. RAMESH

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v.

KANIKE HARISH KUMAR UJWAL & ANR.

(Criminal Appeal No. 603 of 2019)

APRIL 05, 2019

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**[DR. DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

Code of Criminal Procedure, 1973: s.482 – Quashing of complaint filed under s.138 NI Act – Case of the appellant-complainant was that the partnership firm of which the first respondent was a partner had obtained contracts for data entry, which were sub-contracted to the complainant on deposit of caution amount for assigning the job of data entry to him – After the job of data entry was completed, the accused issued two cheques which on presentation were dishonoured on the ground of insufficiency of funds – Thereafter, two more cheques were issued by the managing partner which were again returned unpaid – Complaint filed under s.138 NI Act – High Court quashed the complaint – Appeal by complainant – Question for consideration in the appeal was whether there were sufficient averments in the complaint to meet the requirement of s.141(1) NI Act – Held: In terms of the explanation to s.141, the expression “company” is defined to mean any body corporate and include a firm or other association of individuals – Sub-section (1) of s.141 postulates that where an offence is committed under s.138 by a company, the company as well as 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 shall be deemed to be guilty of the offence – In the instant case, the complaint contained sufficient description of the nature of the partnership, the business which was being carried on and the role of each of the accused in the conduct of the business and, specifically, in relation to the transactions which took place with the complainant – At every place in the averments, the accused were referred to in the plural sense – Besides this, the specific role of each of them in relation to the transactions arising out of the contract in question, which ultimately led to the dishonour of the

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- A *cheques, was elucidated – The averments were sufficient to meet the requirement of s.141(1) – The fact that the first accused was a partnership firm of which the remaining two accused were partners was missed by the High Court – Thus, High Court was in error in quashing the complaint against the first respondent – Negotiable Instruments Act, 1881 – ss.138 and 141.*

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Allowing the appeal, the Court

- HELD : The complaint contains a recital of the fact that the first set of cheques were returned for insufficiency of funds. The complaint also contains an averment that after the second set of cheques were dishonoured, the accused assured the complainant that they will be honoured on re-presentation in the month of July 2011. The averments are sufficient to meet the requirement of Section 141(1). The High Court proceeded on the basis that the first accused was a company in which the other two accused were directors. Section 141 undoubtedly uses the expression “company” so as to include a firm or association of persons. The fact that the first accused, in the present case, is a partnership firm of which the remaining two accused are partners has been missed by the High Court. [Paras 16, 17, 18]**

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Gunmala Sales Private Limited v. Anu Mehta and Others
(2015) 1 SCC 103 : [2014] 10 SCR 1117 – relied on

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Case Law Reference

[2014] 10 SCR 1117 relied on Para 7

- CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 603 of 2019.**

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From the Judgment and Order dated 13.06.2018 of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Criminal Petition No. 5301 of 2014.

- G Ms. Bhabhna Das, Krishna Dev Jagarlamudi, Advocates for the Appellant.**

Abhimanyu Bhandari, Ms. Akriti Chaubey, Ms. Roohina Dua, Kunwar Aditya Singh, Ejaz Maqbool, S. Udaya Kumar Sagar, Mrityunjai Singh, Advs. for the Respondents.

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The Judgment of the Court was delivered by A
DR. DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

2. This appeal arises from a judgment dated 13 June 2018 of a learned Single Judge of the High Court of Judicature at Hyderabad.¹ While allowing a petition under Section 482 of the Code of Criminal Procedure, 1973² instituted by the first respondent, the High Court quashed the proceedings³ on the file of the Special Judicial Magistrate of First Class arising out of a complaint under Section 138 of the Negotiable Instruments Act, 1881.⁴ B

3. The appellant is the complainant. The first accused is a partnership firm by the name of Vainqueur Corporate Services. C

4. The third accused is the managing partner. The first respondent, who is arrayed as the second accused, is a partner of the firm. The complaint alleges that the partnership firm was dealing in data entry work. After obtaining contracts for data entry, sub-contracts were entered into by the firm for the completion of the assignments. Paragraphs 1 to 7 of the complaint are material to the controversy in the present case and are extracted below: D

“1. That the accused No. 3 is the Managing Director and Accused No. 2 is one of the partners of M/s. Vainqueur Corporate Services situated at Hyderabad and dealing in data entry work. They used to take contracts of data entry and give sub contracts to others to complete said assignment. E

2. The accused persons have given sub contract of data entry to the complainant in the month of August 2010 by taking a caution deposit of Rs 1,00,000 which has paid through two cheques which were credited into their account No. 304011014832 at ING Vysya Bank on 30.08.2010. Thereafter, they have assigned the job of data entry to the complainant from the month of September 2010 to December 2010. F
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¹“Criminal Petition No. 5301 Of 2014”

²“CrPC”

³“Criminal M.P. No. 295 of 2014 in C.C. No. 751 of 2012”

⁴“The Act” H

- A 3. The complainant did the data entry work for said four months worth of Rs 8,50,000 as per rates of understanding. They have issued cheque bearing No. 929605 dated 01.11.2010 drawn on Axis Bank, Hyderabad for Rs 2,00,000 towards work of September 2010 and cheque bearing No. 929620 dated 18.12.2010 drawn on Axis Bank, Hyderabad for Rs 2,50,000 towards work of October 2010.
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- C 4. The complainant presented said two cheques for collection through his bank i.e., HDFC, Mahabubnagar but said cheques were returned unpaid due to insufficient balance in their bank account. The said fact of return of cheques was informed to the accused with a request to pay the dishonoured cheque amount along with subsequent months i.e., for the month of November and December 2010 amounts.
- D 5. On that accused No. 2 transferred Rs. 1,00,000 from his account No. 10141560000576 to the account No. 10141070007111 of complainant at HDFC Bank, Mahabubnagar on 08.02.2011 and 10.02.2011. They also assured the complainant to pay the balance amount within short time. As the accused no. 2 is son of brother in law of complainant, he believed them and kept quiet for some time.
- E As they have committed default in payment of amounts, the complainant could not continue said work from the month of January 2011, as he had no money to pay the salaries of his employees.
- F 6. After repeated demands for the payment of balance amount of Rs. 7,50,000 towards completed work and Rs. 1,00,000 given towards caution deposit, the accused No. 3 issued two more cheques bearing No. 929675 and 929676 dated 30.05.2011 and 19.07.2011 respectively each for Rs. 2,00,000 drawn on Axis Bank Ltd., Hyderabad towards part payment of due amount and assured to pay the balance amount within short time.
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- H 7. The complainant presented said cheque bearing No. 929675 but the same was returned unpaid due to insufficient funds in their bank account on 30.05.2011. The complainant

informed the accused about the return of cheque and they assured to honour both cheques on re-presentation in the month of July 2011. As per their request, the complainant presented cheques bearing No. 929675 and 929676 in the month of July 2011 but both cheques again returned unpaid on 14.07.2011 and 20.07.2011 respectively for insufficient funds in their bank account. Since then the complainant is tried to contact the accused to inform and for the payment of cheques amount along with entire due amount but they have avoided the complainant.”

In paragraph 8 of the complaint, there is an averment that a notice of demand was issued within 30 days of the dishonour of the cheque on 1 August 2011 in spite of which payment was not made.

5. The complaint was instituted on 19 September 2011 before the Special Judicial Magistrate First Class, Mahabubnagar. Non-bailable warrants were issued against the first respondent as he failed to appear in the proceedings. The warrants were recalled. The first respondent instituted proceedings under Section 482 of the CrPC. The High Court quashed the proceedings by its impugned judgment and order.

6. The High Court held that the averments contained in paragraph 5 of the complaint were not sufficient to implicate criminal liability upon the first respondent for an offence punishable under Section 138. It is this view of the High Court which falls for consideration in the present appeal.

7. Ms. Bhabhna Das, learned counsel appearing on behalf of the appellant submits that the High Court was manifestly in error in quashing the complaint. Besides relying on the decision of this Court in *Gunmala Sales Private Limited v. Anu Mehta and Others*⁵, learned counsel submitted that the averments contained in the complaint are sufficient to meet the requirement of Section 141.

8. On the other hand, Mr. Abhimanyu Bhandari learned counsel appearing on behalf of the first respondent submits that under Section 141(1), where the person committing an offence 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

⁵(2015) 1 SCC 103 (at paragraph 30 and 31)

A the company as well as the company shall be deemed to be guilty of the offence. The submission is that there was no averment in the complaint that the first respondent was incharge of and was responsible to the “company” for the conduct of the business. The defence of the first respondent is that, he resides in Kuwait where he is employed with the National Bank of Kuwait. Hence, he has no day to day connection with the affairs of the partnership firm. In these circumstances, learned counsel submitted that the High Court having quashed the complaint, this Court ought not to exercise its jurisdiction under Article 136 to interfere with the judgment and order of the High Court.

C 9. Section 141(1) provides as follows:-

“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:

E [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.]

F 2. Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”

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The explanation to the Section is in the following terms:-

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“Explanation – For the purposes of this section -

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

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10. In terms of the explanation to Section 141, the expression “company” has been defined to mean any body corporate and to include a firm or other association of individuals. Sub-section (1) of Section 141 postulates that where an offence is committed under Section 138 by a company, the company as well as 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 shall be deemed to be guilty of the offence.

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11. In determining as to whether the requirements of the above provision have been fulfilled, it is necessary to bear in mind the principle of law that a partnership is a compendious expression to denote the partners who comprise of the firm. By the deeming fiction in Explanation (a) the expression company is defined to include a firm.

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12. The issue is whether there are sufficient averments in the complaint to meet the requirement of Section 141(1). This is a matter which has to be determined on a holistic reading of the complaint. From the averments in the complaint, the case of the complainant is that the partnership firm of which the first respondent is a partner had obtained contracts for data entry, which were being sub-contracted to the complainant. The accused are alleged to have obtained a caution deposit of Rs 1,00,000 and to have assigned the job of data entry to the complainant. After completing the job of data entry, the accused issued two cheques dated 1 November 2010 and 18 December 2010 for the amount of Rs 2,00,000 and Rs 2,50,000 respectively. On presentation, the cheques were returned due to insufficiency of funds. It was thereafter that the first respondent is alleged to have transferred an amount of Rs 1,00,000 from his account on 8 February 2011 and 10 February 2011. The complaint contains the statement that the parties are related. Thereafter, two further cheques were issued by the managing partner on 30 May 2011 and 19 July 2011 each in the amount of Rs 2,00,000.

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A After the cheques were returned unpaid due to insufficiency of funds, the complainant is alleged to have informed the accused who are stated to have assured him that both the cheques would be honoured on representation in the month of July 2011.

B 13. The submission is that the above averments are adequate to meet the requirements of Section 141 having regard to the fact that the first accused is a partnership firm.

14. While laying down the general principles which must apply to this body of law, a two-Judge Bench of this Court in *Gunmala Sales Private Limited* (supra) held:

C “30. When a petition is filed for quashing the process, in a given case, on an overall reading of the complaint, the High Court may find that the basic averment is sufficient, that it makes out a case against the Director; that there is nothing to suggest that the substratum of the allegation against the Director is destroyed rendering the basic averment insufficient and that since offence is made out against him, his further role can be brought out in the trial. In another case, the High Court may quash the complaint despite the basic averment. It may come across some unimpeachable evidence or acceptable circumstances which may in its opinion lead to a conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time and therefore making him stand the trial would be an abuse of process of court as no offence is made out against him.”

F 31. When in view of the basic averment process is issued the complaint must proceed against the Directors. But, if any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of court. He cannot get the complaint quashed merely on the ground that apart

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from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint it must be shown that no offence is made out at all against the Director.”

15. In the present case, it is evident from the relevant paragraphs of the complaint which have been extracted above that the complaint contains a sufficient description of (i) the nature of the partnership; (ii) the business which was being carried on; (iii) the role of each of the accused in the conduct of the business and, specifically, in relation to the transactions which took place with the complainant. At every place in the averments, the accused have been referred to in the plural sense. Besides this, the specific role of each of them in relation to the transactions arising out of the contract in question, which ultimately led to the dishonour of the cheques, has been elucidated.

16. The complaint contains a recital of the fact that the first set of cheques were returned for insufficiency of funds. It is alleged that the first respondent transferred an amount of Rs 1,00,000 on 8 February 2011 and 10 February 2011. The complaint also contains an averment that after the second set of cheques were dishonoured, the accused assured the complainant that they will be honoured on re-presentation in the month of July 2011. The averments are sufficient to meet the requirement of Section 141(1).

17. The High Court proceeded on the basis that the first accused was a company in which the other two accused were directors. Section 141 undoubtedly uses the expression “company” so as to include a firm or association of persons. The fact that the first accused, in the present case, is a partnership firm of which the remaining two accused are partners has been missed by the High Court.

18. Be that as it may, for the reasons adduced above, we have come to the conclusion that the High Court was in error in quashing the criminal case against the first respondent.

19. We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 13 June 2018.

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A 20. At this stage, Mr. Abhimanyu Bhandari, learned counsel has submitted that the first respondent may be granted an exemption from appearing before the Trial Court. We leave it open to the first respondent to move an application in that regard before the learned Trial Judge which would be considered in accordance with law.

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Devika Gujral

Appeal allowed.