

# **S.V. Muzumdar And Ors vs Gujarat State Fertilizer Co. Ltd. And ... on 25 April, 2005**

**Author: Arijit Pasayat**

**Bench: Arijit Pasayat, S.H. Kapadia**

CASE NO.:

Appeal (crl.) 609 of 2005

PETITIONER:

S.V. Muzumdar and Ors.

RESPONDENT:

Gujarat State Fertilizer Co. Ltd. and Anr.

DATE OF JUDGMENT: 25/04/2005

BENCH:

Arijit Pasayat & S.H. Kapadia

JUDGMENT:

JUDGMENT ARIJIT PASAYAT, J.

Leave granted.

In all these appeals the appellants have questioned correctness of the judgment rendered by a Single Judge of the Gujarat High Court refusing to accept the prayer by the appellants to quash the proceedings initiated on the basis of a complaint filed by the respondents alleging commission of offence in terms of Section 138 of the Negotiable Instruments Act, 1881 (in short the 'Act') and other connected offences.

The facts as projected by the respondents in the complaint were to the effect that the respondent no. 1 (hereinafter referred to as the 'complainant') supplied goods on credit to M/s. Garware Nylons Ltd. (hereinafter referred to as the 'Company') (accused no. 14). Cheques issued by the company were not honoured by the drawee bank on the ground of insufficient funds. Payments were not made even after legal notices. There were 14 accused persons including the company named in the complaint. Some of the accused persons were Directors and while others were employees. Learned Chief Judicial Magistrate, Vadodara after recording statement of marketing manager who had filed the complaint for himself and on behalf of the complainant-company, issued summons to all the accused persons for facing trial for alleged commission of offences punishable under Section 138 of the Act read with Section 420 and 114 of the Indian Penal Code, 1860 (in short the 'IPC'). The order issuing summons was challenged by filing criminal revision application which were dismissed by order dated 21.3.1996. Said common judgment and order was challenged before the High Court by

filing special criminal applications and these applications were permitted to the withdrawn to enable the appellants to move applications before the learned Chief Judicial Magistrate as stated by the petitioners. Application was filed with prayer to drop proceedings. That application was rejected by order dated 21.8.1997. Same was questioned before the High Court. The challenge before the High Court was primarily on the ground that there was no material to show that the accused persons at the time of offence as allegedly committed were in charge, and/or responsible to the company for the conduct of the business as required under Section 141(1) of the Act. It was also submitted that the deeming provision under sub-section (2) of Section 141 which covers persons with whose consent or connivance or any attributable negligence for commission of the offence by the company was also not applicable. The High Court did not accept the pleas and held that the controversy was to be adjudicated at the trial. It considered the petition to be unacceptable attempt to stall the criminal proceedings at the threshold.

In support of the appeals, learned counsel for the various appellants submitted that identical issues have been referred for consideration by larger Bench and, therefore, these matters should also be tagged down with those cases. Reference has been made to various order in this connection.

It was on merits pointed out that even the complaint read as a whole does not disclose commission of any offence, more particularly, so far as the appellants are concerned. It was pointed out that some of the appellants are lawyers and/or other professionals who had no scope for direct participation in the conduct of business and are not involved in the conduct of business and, therefore, no offence can be attributed to them in terms of Section 141 of the Act.

In response, learned counsel for the respondents submitted that there is no challenge to the constitutional validity of the provisions and that can never be subject matter of challenge in the proceedings under the Code of Criminal Procedure, 1973 (in short the 'Code'). The allegations against the accused persons were covered by Section 141 of the Act. There were specific allegations against the appellants and, therefore, the courts below were justified in refusing to accept the prayer made by the appellants to drop the proceedings.

Section 141 of the Act reads as follows :

"141. Offences by Companies : (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.

(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 it, 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.

Explanation- For the purpose 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."

We find that the prayers before the courts below essentially were to drop the proceedings on the ground that the allegations would not constitute a foundation for action in terms of Section 141 of the Act. These questions have to be adjudicated at the trial. Whether a person is in charge of or is responsible to the company for conduct of business is to be adjudicated on the basis of materials to be placed by the parties. Sub-section (2) of Section 141 is a deeming provision which as noted supra operates in certain specified circumstances. Whether the requirements for the application of the deeming provision exist or not is again a matter for adjudication during trial. Similarly, whether the allegations contained are sufficient to attract culpability is a matter for adjudication at the trial.

Under Scheme of the Act, if the person committing an offence under Section 138 of the Act is a company, by application of Section 141 it is deemed that every person who is in charge of and responsible to the company as well as the company are guilty of the offence. A person who proves that the offence was committed without his knowledge or that he had exercised all due diligence is exempted from becoming liable by operation of the proviso to sub-section (1). The burden in this regard has to be discharged by the accused.

The three categories of persons covered by Section 141 are as follows:

(1) The company who committed the offence.

(2) Everyone who was in charge of and was responsible for the business of the company.

(3) Any other person who is a director or a manager or a secretary or officer of the company with whose connivance or due to whose neglect the company has committed the offence.

Whether or not the evidence to be led would establish the accusations is a matter for trial. It needs no reiteration that proviso to sub-section (1) of Section 141 enable the accused to prove his innocence by discharging the burden which lies on him.

Therefore, the High Court was justified in rejecting the petition filed by the appellants. The larger Bench is considering issues referred to. The decision to be rendered by the larger Bench obviously would govern the trial. As rightly submitted by the respondents in these appeals, there is no challenge to the validity of any provision and grievance essentially related to the prayer for dropping the proceedings. Therefore, we find no substance in the plea for tagging these matters with those pending before the large Bench.

Taking into account the fact that the cases have been pending for nearly a decade, we direct that the matter be taken up on 8th of August, 2005 by the trial Court. If the appellants file applications in terms of Section 205 of the Code for dispensing with their personal attendance, the trial Court will do to take note of the same and dispense with the personal attendance by stipulating conditions in terms of Section 205(2) of the Code. It has to be borne in mind that while dealing with an application in terms of Section 205 of the Code, the Court has to consider whether any useful purpose would be served by requiring the personal attendance of the accused or whether progress of the trial is likely to be hampered on account of his absence. We make it clear that if at any stage the trial Court comes to the conclusion that the accused persons are trying to delay the completion of trial, it shall be free to refuse the prayer for dispensing with personal attendance. The trial Court would do well to complete the trial by the end of November, 2005. The parties shall co-operate in that regard. We make it clear that we have not expressed any opinion on the merits of the case.

The appeals are accordingly dismissed.