

Smt. Katta Sujatha vs Fertilizers & Chem. Travancore Ltd. And ... on 23 August, 2002

Equivalent citations: 2003(1)AWC612(SC), III(2005)BC575(SC), JT2002(10)SC134, (2002)7SCC655, AIRONLINE 2002 SC 34, (2002) 2 BANK J 579, 2002 CRI LR(SC MAH GUJ) 805, (2003) 1 BANK CLR 459, (2003) 1 BOM CR 517, (2003) 114 COM CAS 27, (2002) 4 REC CRI R 502, (2003) 1 ALL WC 612, (2003) ILR (KANT) 4856, (2003) 2 ALL CRI R 1563, (2002) 6 SCALE 169, 2002 (7) SCC 655, (2004) 2 CUR CRI R 94, (2003) 1 EAST CRI C 175, (2003) 1 ALL CRI LR 597, (2005) 3 BANK CAS 575, (2003) 50 ALL LR 232, (2003) 1 RAJ CRI C 244, 2004 ALL MR (CRI) 598, 2003 SCC (CRI) 151, 2002 CRI LR (SC&MP) 805, (2003) SC CR R 1019, (2003) 3 ALL IND CAS 292 (SC), (2003) 3 ALLINDCAS 292

Bench: S. Rajendra Babu, P. Venkatarama Reddi

JUDGMENT

1. Leave granted.

2. A complaint was filed in the Court of IV Additional Munsif Magistrate, Guntur that the Firm (respondent) and three other persons named therein as accused have committed certain acts which attract the provisions of Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act').

3. The complaint set out that a cheque had been issued on behalf of the Firm-1st accused by T. Satyanarana-3rd accused but did not specifically attribute any particular act done by 4th accused, who is appellant before us.

4. The trial Court having proceeded with the matter, a petition was filed under Section 482 of the Cr.P.C. for quashing the complaint.

The said petition having been dismissed this appeal is filed by special leave. It is necessary to state that the Special leave petition filed by others has been dismissed by our order dated 15.2.2002. The contention urged before the High Court was that all of them are not responsible for the conduct of the business of the Firm and only T. Satyanarana-3rd accused was in charge of the Firm-first accused. Whether it is so or not, is not for us to examine at this stage of the matter.

However, one thing is clear that the appellant was in no way involved in any of the transaction referred to in the complaint and it was not stated that she was in charge of the business and was responsible for the conduct of the business of the Firm in terms of the Section 141 of the Act nor was

there any other allegation made against the appellant that she had connived with any other partner in the matter of issue of cheque. In these circumstances the High Court ought to have examined the matter from this angle but on the other hand, the High Court merely stated that that all the accused are not only in charge but are responsible to the conduct of the business of the Firm. Indeed the same question has come up before this Court for examination in *State of Karnataka v. Pratap Chand and Ors.* wherein the question as who is a "person in charge" of business of firm in the context of Section 18A, Drugs and Cosmetics Act, 1940 was considered by this Court. This Court explained the meaning by observing that the term "person in charge" must mean that the person should be in over all control of the day to day business of the company or firm.

The person should be a party to the policy being followed by a company and yet not be in-charge of the business of the company or may be incharge of but not in over-all-charge or may be in charge of only some part of business.

5. In short the partner of a firm is liable to be convicted for an offence committed by the firm if he was in charge of and was responsible to, the firm for the conduct of the business of the firm or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the partner concerned.

6. To the same effect is the decision of this Court in *KPG Nayar v. Jindal Menthol Ltd.* - 2000 (6) 578 and *Anil Hoda v. Indian Acrylic Ltd.* - JT 1999 SCC 223. Examined in the light of these decisions and the law enunciated, we find no case as such has been made out for proceeding against the appellant.

7. The appeal is allowed and the order of the High Court is set aside so far as appellant before us is concerned. Proceedings in the criminal case are quashed in so far as appellant before us is concerned.