

Ashok Shewakramani vs State Of Andhra Pradesh on 3 August, 2023

Author: Abhay S.Oka

Bench: Sanjay Karol, Abhay S.Oka

2023 INSC 692

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.879 OF 2023

ASHOK SHEWAKRAMANI & ORS.

... APPELLANT(S)

VS.

STATE OF ANDHRA PRADESH & ANR.

... RESPONDENT(S)

WITH

CRIMINAL APPEAL Nos. 884, 882, 880, 881 and 883 of 2023

J U D G M E N T

ABHAY S.OKA, J.

CRIMINAL APPEAL NO.879 OF 2023

1. We have heard the learned senior counsel appearing for the appellants. The appellants are Accused Nos.5, 6 and 7 in a complaint filed by the second Respondent under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act').

2. By the impugned Judgment, the High Court has dismissed a petition filed by the appellants under Section 482 of the Code of Criminal Procedure, 1973 (for short, 13:57:54 IST Reason:

'the Code') for quashing the complaint. By the impugned Judgment, several petitions under Section 482 of the Code were decided arising out of different complaints filed

by the same complainant.

3. At the outset, we may note here that in paragraph 10 of the impugned Judgment, the High Court has purported to quote the relevant paragraph from the complaint bearing CC No.1/2012, which is the subject matter of this appeal. We, however, find that the averments made in this complaint are different.

4. The main issue canvassed by the learned Senior Counsel appearing for the appellants is that though the appellants were directors of the first accused company at a relevant time, the mandatory averments which are required to be made in terms of sub-section (1) of Section 141 of the NI Act have not been made. The response of the learned counsel appearing for Respondent No.2 is that in substance, in paragraph 7 of the complaint, the said averments are found. Secondly, the learned counsel submitted that the appellants have not replied to the statutory notice issued under Section 138 of the NI Act.

In support of the second contention regarding the failure of the appellants to give a reply to the statutory notice, he relies upon a decision of this Court in the case of “S.P. Mani and Mohan Diary Versus Dr Snehalatha Elangovan”¹.

5. We have carefully perused the complaint and the affidavit in support of the complaint. In paragraph 4 of the complaint, it is stated that the accused No.1 is the Company on whose account the two cheques were issued and accused No.2 is the Managing Director of the accused No.1. The present appellants have been described as the Directors of the accused No.1 - Company. The cheques were signed by accused No.2 who is the Managing Director of the accused No.1 company. The only material averments even according to the case of learned counsel for Respondent No.2 are found in paragraph 7 of the complaint which read thus:

“7. The Accused 2 to 7 are fully aware of the business transactions of the Accused No.1 company. They are all jointly and severally liable for the transactions of the Accused No. 1 company. All the accused are fully aware of the issuance of the above cheques without balance in the account. They are also fully aware that the cheques will be dishonoured. It clearly establishes that all the Accused with an intention to deceive and defraud the complainant have issued the cheques and directed the complainant to present the cheques. So, the accused have issued the above cheques knowing fully well,

1. 2022 SCC Online SC 1238 that there are no funds in their account. The accused have not the cheques amount within 15 days after receipt of the notice. The cheques are issued towards legally enforceable debt and liability of the complainant. So, they have committed an offence, punishable under section 138 of N.I. Act.”

6. It is also necessary to note the averments made in Paragraph 8 of the complaint in which the second respondent stated that the statutory notice of demand was not served on the accused. In fact,

the second respondent has relied upon the returned postal covers. Even in the affidavit in support of the complaint, the second respondent has come out with a case that the demand notice was not served.

7. In fact, the service of notice of demand is a condition precedent for filing a complaint in view of clause (c) of Section 138 of the NI Act. This is one ground on which the complaint must fail.

8. Now we come to the averments made in Paragraph 7. Firstly, it is stated that all the Directors were liable for the transactions of the accused No.1 company. Secondly, it is stated that all the accused were fully aware of the issuance of the cheques subject matter of the complaint, and they were also aware that the cheques will be dishonoured. Further, it is alleged that all the accused knew that there were no funds in the account of accused No.1 – company.

9. Sub-section 1 of Section 141 of the NI Act required the complainant to aver that the present appellants at the time of the commission of the offence were in charge of, and were responsible to the company for the conduct of the business of the company. In the present case, all that the second respondent has alleged is that the appellants were liable for transactions of the company and that they were fully aware of the issuance of the cheques and dishonour of the cheques.

10. Therefore, even if we decide to take a broad and liberal view of the pleadings in the complaint, we are unable to draw a conclusion that compliance with the requirements of sub-Section 1 of Section 141 N.I. Act was made by the second respondent. The most important averment which is required by sub-Section (1) of Section 141 of the NI Act is that the directors were in charge of, and were responsible for the conduct of the company. The appellants are neither the signatories to the cheques nor are whole- time directors. The decision in the case of “S.P. Mani and Mohan Diary Versus Dr. Snehalatha Elangovan”¹ will have no application as in the present case, the statutory notice was admittedly not served to the accused. Obviously, the High Court has not adverted to aforesaid two glaring deficiencies in the complaint.

11. In the circumstances, the appeal must succeed and the impugned Order is quashed and set aside, only in so far as the present appellants are concerned. Accordingly, a complaint bearing CC No.1/12 pending in the Court of Judicial Magistrate, First Class, Nandyal is quashed only in so far as present appellants are concerned.

12. The appeal is accordingly allowed on the above terms.

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13. This appeal takes exception to the order of the High Court by which the prayer made by the present appellants for quashing a complaint under Section 138 of the NI Act has been rejected. With the assistance of the learned counsel appearing for the parties, we have perused the averments made in the complaints (Complaint Case Nos.963 and 692 of 2011). The present appellants are the accused Nos. 5 to 7. In two places in the complaint in paragraphs Nos. 2 and 4, the second respondent-complainant has averred that accused No.2 is the Managing Director of the accused

No.1 company and accused Nos. 3 and 9 are the directors of the accused No.1 company. Therefore, the present appellants are not even described as the directors of the first accused company. Moreover, we find that the averments in terms of Section 141(1) of the NI Act are not found at all in the entire complaint. These facts were not noticed by the High court. Hence, the appeals must succeed and the impugned judgment insofar as the appellants are concerned is set aside. Complaint Nos.963 and 692 of 2011 pending in the Court of Judicial Magistrate First Class, Nandyal is quashed so far as the present appellants are concerned.

14. The appeals are accordingly allowed. CRIMINAL APPEAL NOS.880, 881 and 883 OF 2023

15. The facts leading to the filing of these three appeals are identical. The prayer made by the appellants under Section 482 of the Code of Criminal Procedure, 1973 for quashing the complaint filed by the second respondent has been rejected by the High Court by the impugned judgment. The present appellants have been arrayed as accused Nos.5 to 7 in the complaint filed by the second respondent under Section 138 of the NI Act. The accused No.1 in the complaint is a limited company. The accused No.2 is the Chairman of the company, and the accused No.3 is the Managing Director of the Company. The accused Nos. 5 to 7 have been described as directors of the accused No.1 company. The only issue which we are called upon to decide is whether the second respondent has incorporated the averments which are necessary to be incorporated in a complaint under Section 138 of the NI Act in view of sub-section 1 of Section 141 of the NI Act. The averments made in the complaints which are the subject matter of these three appeals are identical. We are referring to the averments made in one of the three complaints (in Complaint Case No.74 of 2011) in paragraph 1:

"1) It is submitted that the complainant is the proprietor of Sri Chakra Cotton Traders, doing business in Cotton, resident of bearing Door Number 3/917-I, Sri Chackra Nilayam, Y.M.R. Colony, Proddatur Town-516360, Kadapa Distrcit, A.P. The accused No.1 is the Private Limited concerned Company and registered under Companies Act. The Accused No.2 is Chairman of Accused No.1.

Accused No.3 is the Managing Director of Accused No.2 Accused No.4 to 7 are the directors of the accused No.1 Company and Accused No. 2 to 7 are Managing the Company and busy with day to day affairs of the Company and all are managing the company and also in charge of the company and all are jointly and severally liable for the acts of accused No.1 Company."

16. The learned counsel appearing for the appellants has relied upon various decisions of this Court in support of his plea that the material averments which are required to be incorporated in terms of sub-section (1) of Section 141 of NI Act are completely lacking in these cases. He mainly relied upon a decision of this Court in the case of Ashoke Mal Bafna v. M/s. Upper India Steel Mfg. & Engg. Co.Ltd.² He would submit that for attracting vicarious liability under sub-section 1 of Section 141 of the NI Act, it is mandatory to make averments as specified therein.

17. The learned counsel appearing for the second respondent-complainant firstly relied upon a decision of this Court in the case of S.P.Mani and Mohan Dairy v. Dr Snehalatha Elangovan¹ and

especially what is held in the concluding part of the said judgment in paragraph 47. He also placed reliance on various decisions which were considered by the High Court while rejecting the prayer made by the appellants under Section 482 of the Code for quashing the complaints.

2. (2018) 14 SCC 202

18. After having considered the submissions, we are of the view that there is non-compliance on the part of the second respondent with the requirements of sub-section 1 of Section 141 of the NI Act. We may note here that we are dealing with the appellants who have been alleged to be the Directors of the accused No.1 company. We are not dealing with the cases of a Managing Director or a whole-time Director. The appellants Have not signed the cheques. In the facts of these three cases, the cheques have been signed by the Managing Director and not by any of the appellants.

19. Section 141 is an exception to the normal rule that there cannot be any vicarious liability when it comes to a penal provision. The vicarious liability is attracted when the ingredients of sub-section 1 of Section 141 are satisfied. The Section provides that every person who at the time the offence was committed was in charge of, and was responsible to the Company for the conduct of business of the company, as well as the company shall be deemed to be guilty of the offence under Section 138 of the NI Act. In the light of sub-section 1 of Section 141, we have perused the averments made in the complaints subject matter of these three appeals. The allegation in paragraph 1 of the complaints is that the appellants are managing the company and are busy with day to day affairs of the company. It is further averred that they are also in charge of the company and are jointly and severally liable for the acts of the accused No.1 company. The requirement of sub-section 1 of Section 141 of the NI Act is something different and higher. Every person who is sought to be roped in by virtue of sub-section 1 of Section 141 NI Act must be a 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. Merely because somebody is managing the affairs of the company, per se, he does not become in charge of the conduct of the business of the company or the person responsible for the company for the conduct of the business of the company. For example, in a given case, a manager of a company may be managing the business of the company. Only on the ground that he is managing the business of the company, he cannot be roped in based on sub-section 1 of Section 141 of the NI Act. The second allegation in the complaint is that the appellants are busy with the day-to-day affairs of the company. This is hardly relevant in the context of sub- section 1 of Section 141 of the NI Act. The allegation that they are in charge of the company is neither here nor there and by no stretch of the imagination, on the basis of such averment, one cannot conclude that the allegation of the second respondent is that the appellants were also responsible to the company for the conduct of the business. Only by saying that a person was in charge of the company at the time when the offence was committed is not sufficient to attract sub-section 1 of Section 141 of the NI Act. Sub-section 1 of Section 141 reads thus:

"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.]"

20 On a plain reading, it is apparent that the words "was in charge of" and "was responsible to the company for the conduct of the business of the company" cannot be read disjunctively and the same ought be read conjunctively in view of use of the word "and" in between.

21. Therefore, even by giving a liberal construction to what is averred in paragraph 1 of the complaints, we are unable to accept the submission made by the learned counsel appearing for the second respondent that these averments substantially comply with sub-section (1) of Section 141 of the NI Act.

22. Accordingly, appeals are allowed. The impugned judgment is set aside insofar as the appellants are concerned.

23. Complaint Nos.25, 169 and 74 of 2011 stand quashed only insofar as accused Nos. 5 to 7 are concerned.

24. There will be no order as to costs.

.....J. (ABHAY S.OKA)J. (SANJAY KAROL) NEW DELHI;

August 03, 2023.