

IN THE SUPREME COURT OF INDIA
 CRIMINAL APPELLATE JURISDICTION
 CRIMINAL APPEAL NO. 213 OF 2006

Mannalal Chamaria & Anr.

...Appellants

Versus

State of West Bengal and Anr.

...Respondents

WITH

CRIMINAL APPEAL NO. 215 OF 2006

AND

CRIMINAL APPEAL NO. 217 OF 2006

J U D G M E N T

Madan B. Lokur, J.

1. The question arising for consideration in these appeals relates to the alleged failure (and consequential effect) of Pradip Sarkar to specifically state in his complaint filed under Sections 138 and 141 of the Negotiable Instruments Act, 1881 that the appellants/accused persons were in charge of and responsible for the conduct of the business of M/s. Heritage Herbs Ltd. of which they were said to be Directors.

2. In a complaint filed on 31st March, 2001, Pradip Sarkar alleged that Heritage Herbs had made an offer for collecting money from the market with a view to allot land to the intending investors. On the basis of the offer made, Pradip Sarkar invested an amount of Rs.1,50,000/- and Heritage Herbs issued three receipt-cum-allotment letters for three plots of land to Pradip Sarkar. At the time of handing over the receipt-cum-allotment letters, Pradip Sarkar was also handed over three cheques of Rs. 61,000/- each post dated to 29th October, 2000. These cheques were issued by Heritage Herbs and were signed by Raj Kumar Chamaria as Chairman of the said concern.

3. All the three cheques were deposited by Pradip Sarkar but were dishonoured by the concerned bank. This led Pradip Sarkar to take steps to issue a notice to and initiate proceedings against Heritage Herbs and Raj Kumar Chamaria under the provisions of Section 138 read with Section 141 of the Negotiable Instruments Act, 1881.

4. During the pendency of the proceedings Raj Kumar Chamaria died on 10th December, 2003.

5. Thereafter, Pradip Sarkar moved an application for impleading the appellants as accused persons. The application was allowed and the appellants were impleaded as accused persons by the concerned Magistrate by an order dated 28th April, 2004 and summons issued to them.

6. Feeling aggrieved by their impleadment and summons issued to them, the appellants preferred Criminal Revision Petitions in the Calcutta High Court, which dismissed the petitions.

7. The appellants have challenged the order of the Calcutta High Court and the only contention urged is that no specific allegations were made against them either in the complaint as originally filed on 31st March, 2001 or in the amended complaint filed on 28th April 2004.

8. We have been taken through both the complaints by learned counsel for the appellants and find that there is no allegation worth the name against any of the appellants in either of the complaints. Insofar as the first complaint is concerned, the appellants were not even made parties and therefore there is no question of any allegations being made against them in that complaint. As far as the second complaint is concerned, the only allegation made is to be found in paragraph 6 thereof which reads as follows:-

Mr. Rakesh K. Sharma, Adv.

For Respondent(s)

Mr. Anip Sachthey, Adv.
Ms. Ruby Singh Ahuja, Adv

Hon'ble Mr. Justice Madan B. Lokur pronounced the Judgment of the Bench comprising Hon'ble Mrs. Justice Ranjana Prakash Desai and His Lordship.

The appeals are allowed and the order passed by the High Court is set aside in terms of the signed Non-Reportable Judgment.

| (Vishal Anand) | | (Indu Pokhriyal) | |
| Court Master | | Court Master | |

(Signed Non-Reportable Judgment is placed on the file)

[1] MANU/SC/1081/2013