

r-
Crl.A.No. 881 OF 1999
ITEM NO.102

COURT NO.11

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.881 OF 1999@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

M/S ASHOK LEYLAND FINANCE LTD. ... APPELLANT(S)

VERSUS

R.S. AGGARWAL & ORS. ... RESPONDENT(S)

(With appln.(s) for ex-parte stay and with office report)

Date: 03/12/2002. This/These matter(s) were called on for hearing today.@@
AAAAAAAAAA

CORAM:

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s) Mr. R. Venkataramani, Sr. Adv.
Mr. K.M.K. Nair, Adv.
Mr. P.B. Suresh, Adv.
Mr. Vipin Nair, Adv.
Mr. Nikilesh R., Adv.

For Respondent(s) Mr. Annam D.N. Rao, Adv.

Mr. Alok Aggarwal, Adv. for
Mr. E.C. Agrawala, Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....J.
.SP2

Heard learned counsel for the parties for about one and a half hour.
The Registry is directed to place the papers before Hon'ble the Chief Justice of India for appropriate directions.

.SP1

(K.K. Chawla) (Jasbir Singh) @@
AA
Court Master Court Master

[Signed order is placed on the file]

.PA
.PL58

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.881 OF 1999@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

M/S ASHOK LEYLAND FINANCE LTD. APPELLANT

VERSUS

R.S. AGGARWAL & ORS. RESPONDENTS

O R D E R@@
CCCCCCCC

.SP2

This appeal is filed against the judgment dated 30.9.1997. A complaint under Section 138 of the Negotiable Instruments Act,1881 (hereinafter called "the Act") has been quashed by the Madras High Court merely on the ground that in the complaint it has not been mentioned that the respondents were in charge of, and responsible to, the company for conduct of the business of the company.

The respondents along with 7 other accused persons were Directors of M/s Haryana Petrochemicals Limited. The 1st respondent is the Managing Director. The 2nd respondent is the Joint Managing Director. The cheque in question was signed by the 2nd respondent (Joint Managing
..2/-

-2-

Director) for and on behalf of M/s Haryana Petrochemicals Limited. The 2nd respondent had also sent a reply dated 10th February, 1996 to the statutory notice dated 26th December, 1995. The complaint has been quashed even against the signatory of the cheque i.e. the 2nd Respondent and even against the Managing Director.

In the complaint, it has been mentioned a) that M/s Haryana Petrochemicals Limited had issued the concerned cheque for Rs.53,13,350/- towards settlement of a loan; b) that the cheque was dishonoured when presented with the endorsement "exceeds arrangement"; c) that the notice dated 26th December, 1995 had been issued; d) that M/s Haryana Petrochemicals Limited had failed to make payment; e) that all the accused persons were the company and the Directors.

At this stage, it is necessary to set out Section 141 of the Negotiable Instruments Act. The said Section reads as follows:-

..3/-

.....L.....I.....T.....T.....T.....T...J.
.SP1

"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.

(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."

.....L.....I.....T.....T.....T.....T.....T.....T...J.
.SP2

Thus if the person committing an offence, under Section 138 of the Act, is a Company then, by virtue of Section 141 of the Act it is deemed that every person who was in charge of and responsible to the company for the conduct of business of the company, as well as the company,
..4/-

are guilty of the offence. The proviso, however, exempts a person from becoming liable for the offence, 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.

It is settled law, and no authority is required for the proposition, that in the case of a Company and particularly a Public Limited Company the persons in charge of the company and responsible to the company for conduct of business of the company are the Board of Directors. In other words every Director of a company is a person in charge of the company and responsible to the company for conduct of its business. In a complaint all that is required is that the

ingredients of an offence be made out. In a complaint under Section 138 of the Act the ingredients would be the issuance of the cheque, presentation of the cheque, dishonour of the cheque, service of the statutory notice and non-compliance or non-payment in pursuance of the ..5/-

notice. In such a complaint, by virtue of Section 139 of the Act, it will be presumed that the cheque was received, by the holder, in discharge of a debt or other liability. If the offence is committed by a company then by virtue of Section 141 of the Act, it will be deemed that persons in charge of and responsible to the company and the company are guilty of the offence. Thus in the complaint there need not be any specific averment to this effect. All that is required is that the substance of the allegations should fulfil the requirements of the ingredient.

In K.P.G. Nair v. Jindal Menthol India@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC
Ltd., reported in (2001) 10 SCC 218, it has been@@
CCCC
held in paragraph 9 as follows:-

.....L.....I.....T.....T.....T.....T...J.
.SP1

"9. It is true, as submitted by Mr. Arora, that the words of Section 141 (1) need not be incorporated in a complaint as magic words but it cannot also be disputed that substance of the allegations read as a whole should answer and fulfil the requirements of the ingredients of the said provision (for being proceeded against for an offence which he is alleged to have committed). On the above premise, it is clear that the allegations made in the complaint do not either in express words or with reference to the allegations contained therein make out a case that at the time of commission of the offence the appellant was in charge of and was responsible to the Company for the conduct of its business."

..6/-

.....L.....I.....T.....T.....T.....T.....T...J.
.SP2

Thus, in this case, it is held that it is not at all necessary that the words of Section 141(1) be incorporated in the complaint. All that is required is that the ingredients of the provision must be made out.

In the case of U.P. Pollution Control@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC
Board v. Modi Distillery, reported in (1987) 3@@
CCCC CCCCCCCCCCCCCCCCC

SCC 684, this Court considered the provision of Section 47 of the Water (Prevention and Control of Pollution) Act, 1974, which reads as follows:-

.....L.....I.....T.....T.....T.....T....J.
.SP1

"47. Offences by companies. - (1) where an offence under this Act has been committed by 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 such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an 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

..7/-

-7-

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."

.....L.....I.....T.....T.....T.....T.....T....J.
.SP2

Section 47 of the Water (Prevention and Control of Pollution) Act, 1974 is identical to Section 141 of the Negotiable Instruments Act, 1881. It must be mentioned that Section 47 of the Water (Prevention and Control of Pollution) Act, 1974, and Section 141 of The Negotiable Instruments Act, 1881 are much wider and broader than Section 17 of the Food Adulteration Act, 1957.

In U.P. Pollution Control Board's case@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC
(supra) it has been held that, on a plain reading of Section 47, any person who, at the time of the commencement of the offence, was in charge of, and 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. It has been further held that the proviso to

sub-section (1) of the Section shifts the burden on the delinquent officer to prove that he did not
..8/-

-8-

know of the offence or connived in it or that he had exercised all due diligence to prevent the commission of such offence. It has been held that on a plain reading of the Section, a Chairman, a Vice Chairman, a Managing Director and other members of the Board of Directors who are in charge of and responsible to the company for the conduct of the business of the company, would be deemed to be guilty of the offence for which they are charged. This authority shows that the Managing Directors and Members of the Board of Directors would be persons in charge of and responsible to the company for the conduct of the business of the company. This authority shows that they would be deemed to be guilty unless they discharge the burden cast on them.

Our attention is, however, drawn to a decision of this Court in the case of Katta@
CCCCC
Sujatha v. Fertilizers & Chemicals Travancore@@
CCCCCC CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC
Ltd., (2002) 7 SCC 655. In this case reliance was@@
CCCC
placed on the cases of K.P.G. Nair (supra), State@@
CCCCCCCCCCCC CCCCC
of Karnataka v. Pratap Chand reported in (1981) 2@@
CCCCCCCCCCCC CCCCCCCCCCCC

..9/-

-9-

SCC 335, and Anil Hada v. Indian Acrylic Ltd.,@@
CCCCCCCC CCCCCCCCCCCCCCCCCCCCCCCCCCCCCC
reported in (2000) 1 SCC 1. It was held that as the complaint did not state that the accused was in charge of and responsible for the conduct of business of the company and as the complaint did not attribute any particular act to the accused the complaint could not be allowed to proceed. This Court quashed the complaint.

The case of State of Karnataka (supra) was@@
CCCCCCCCCCCCCCCCCCCC
a case where a full trial had taken place. At the final hearing the Court considered what is meant by a person "in charge of" and "responsible to the company for the conduct of the business of the Company". On evidence the Court found that only respondent No. 1 (therein) was in overall control of the business. On evidence it was held that respondent No.2 (therein) was not in charge of and responsible to the company. This case does not lay down that a complaint would not be maintainable if it is not stated in the complaint that the accused are in charge of and responsible to the company for the conduct of the business.

..10/-

In the case of Anil Hada (supra), it was@@
CCCCCCCCC

contended that the directors of a company could not be prosecuted for offence under Section 138 of the Act unless the company was first held to be guilty of the offence. Such an argument was negated. In so negating it was inter alia held as follows:-

.....L.....I.....T.....T.....T.....T....J.
.SP1

"10. Three categories of persons can be discerned from the said provision who are brought within the purview of the penal liability through the legal fiction envisaged in the section. They are: (1) the company which committed the offence, (2) everyone who was in charge of and was responsible for the business of the company, and (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."

.....L.....I.....T.....T.....T.....T.....T....J.
.SP2

Thus, even this authority recognises the principle that the Director of a company would be deemed to have committed the offence.

Thus, it appears that none of the cases relied upon, in Katta Sujatha's (supra), support@@
CCCCCCCCCCCCCCC
the broad proposition laid down there. In view of
..11/-

the above legal position, we find ourselves unable to agree with the reasoning given in Katta Sujatha@@
CCCCCCCCCCCCCCC
(supra). However, as it is a two-Judge Bench decision which would otherwise be binding on us, we, therefore, refer the following questions for decision by a larger Bench:

.....L.....I.....T.....T.....T.....T.....T....J.
.SP2

a) whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfil the requirements of the said Section and it is not necessary to specifically state in the complaint that the person accused was in charge of, or responsible for, the conduct of the business of the company.

b) Whether a Director of a company would be deemed to be in charge of, and responsible to, the Company for conduct of the business of the company

and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

..12/-

-12-

c) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the Managing Directors or Joint Managing Director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against.

The Registry is directed to place the papers before Hon'ble the Chief Justice of India for appropriate directions.

.SP1

.....J.
(S.N. Variava)

.....J.
(B.N. Agrawal)

New Delhi,
December 03, 2002.