

IN THE SUPREME COURT OF INDIA
 CRIMINAL APPELLATE JURISDICTION
 CRIMINAL APPEAL NO. 400 OF 2015
 (Arising out of SLP (Crl.) No.6422 of 2012)

AJIT BALSE ...Appellan

VERSUS

CAPT.RANGA KARKERE ...Responde

WITH

CRIMINAL APPEAL NO. 401 OF 2015
 (Arising out of SLP (Crl.) No.9695 of 2012)

O R D E R

Crl. Appeal No. 400 of 2015 @ SLP (Crl.) No.6422 of 2012

Leave granted.

This appeal has been preferred by appellant-accused against the judgment dated 20.04.2012 passed by the High Court of Karnataka at Bangalore in Criminal Revision Petition No.404 of 2008.

By the impugned judgment, the High Court affirmed the conviction and sentenced imposed on the accused-appellant for offence u/s 138 of the Negotiable Instruments Act

(hereinafter referred to as the 'Act' for short).

The appellant is the accused whereas the respondent is the complainant before the trial court.

The accused-Ajith Balse is said to be the Managing Director of

Signature Not Verified Tim Tim Far East Export Trading Company Private Limited,
 Digitally signed by Meenakshi Kohli
 Date: 2015.07.09 17:18:07 IST

Patalganga, Raigad District, Maharashtra, whereas

the Reason:

complainant is the Managing Partner of a concern by name Yermal Fish Trading (YFT), carrying on the business of supplying fishes. An agreement was reached on 19.09.2001

Company Private Limited and Yermal Fish Trading , wherein the complainant has supplied beheaded and gutter 'Rani fish' to the accused company. The accused was paying the amount through telegraphic transfer and under the terms of the agreement, the complainant was to send the statement of accounts by fax for every 15 days. At the end of fishing season, i.e., on 04.06.2002, the complainant sent the final statement, under which the accused was liable to pay Rs.73,24,710-00 to the complainant. The accused had called the complainant to his company on 02.08.2002 to settle the debt and at that time, the accused issued three cheques of the State Bank of India (1) bearing No.511693 dated 14.08.2002 for Rs.20 lakhs, (2) bearing No.511694 dated 05.09.2002 for Rs.15 lakhs and (3) bearing No.511695 dated 17.09.2002 for Rs.20 lakhs. The accused on behalf of the company had undertaken to settle the balance amount of Rs.18,24,710/- during the next fishing season.

It appears that the complainant presented the cheques dated 14.08.2002 for Rs.20 lakhs to the Corporation Bank and the said cheque was returned with endorsement "payment stopped" and "funds insufficient". The complainant issued a legal notice dated 09.09.2002 by fax and also by registered post. In absence of any payment made, the complainant approached the trial court and submitted a complaint. The trial court on appreciating of evidence, convicted the accused-appellant for the offence under Section 138 of the Act.

The learned counsel appearing on behalf of the appellant submitted that the appellant was the Managing Director of Tim Tim Far East Export Trading Company Private Limited. The cheque was issued on behalf of the aforesaid company but the said company was not impleaded

as accused in the trial. According to the appellant, in view of law laid down by this court in 'Aneeta Hada v. Godfather Travels and Tours Private Limited' (2012) 5 SCC 661], the prosecution against the appellant was void ab-initio.

In Aneeta Hada's case [2012 (5) SCC 661], the Court, inter alia, held:

".....

53. It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant.

.....
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58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious

liability of others. Thus, the words "as well as the company" appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can

4

only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada is overruled with the qualifier as stated in para 51. The decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us hereinabove."

The said case was also followed in Anil Gupta v. Star India Private Limited and Another (2014) 8 SCALE 480.

Learned counsel appearing on behalf of the respondent contended that the judgment in Aneeta Hada's case cannot be made applicable retrospectively in respect of cases where the conviction took place much prior to the judgment. However, on such ground the relief cannot be denied to the accused. The decision in Aneeta Hada's case may be prospective but that will be applicable to all the pending cases including the trial, appeal or revision or special leave petition/appeal pending before this court.

In view of the aforesaid position, we hold that the judgment rendered in Aneeta Hada's case is also applicable to the case of the accused-appellant.

Following the decision in Aneeta Hada's case, we set aside the judgment dated 07.03.2008 passed by the Sessions Judge, Udupi in Criminal Appeal No. 52 of 2007, the order of conviction dated 22.03.2007 in CC. No. 4700 of 2002 passed by the J.M.F.C. Udupi, District Uduppi, and the impugned order dated 20.04.2012 passed by the High Court Karnataka in Criminal Revision Petition No.404 of 2008.

The appellant stands acquitted.
The appeal is allowed.

5

Leave granted.

This appeal has been preferred by the appellants against the judgment dated 31.08.2012 passed by the High Court of Chhattisgarh at Bilaspur in Criminal Revision No. 365 of 2012. By the impugned judgment, the High Court affirmed the conviction of accused-appellants under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act' for short) and sentence for imprisonment till rising of the Court. Compensation of Rs.5 lakhs awarded to the complainant jointly by the accused under Section 357(3) of the Code of Criminal Procedure (hereinafter referred to as 'Code' for short) in default of payment of compensation to undergo Simple Imprisonment for six months was also affirmed. However, the fine of Rs.5,000/- and in default of payment of fine to further undergo Simple Imprisonment for thirty days passed by the trial court was quashed and thereby the appeal was partly allowed.

As per the complainant, the accused have taken loan of Rs.5 lakhs from the complainant showing themselves as office bearers of the Adiwasi Machua Samiti, Sirsida and issued joint cheques of Rs.5 lakhs on 15.07.2006, cheque was presented for encashment but the same was dishonoured. Then notice under Section 138 of the Act was served upon the accused but they have failed to pay the amount of cheque, thereafter the complaint was filed.

Before the trial court, the appellants-accused have taken the defence that the alleged cheque was not duly recovered but it was security of loan. After hearing both the parties, judicial magistrate, First Class, District Dhamtari, Chhattisgarh, convicted the accused-appellants

and sentenced as aforementioned.

The conviction and sentence was upheld by the appellate court. Challenging the judgment passed by the High Court and the appellate court, the accused-appellants preferred Criminal Revision No. 305 of 2012 wherein the impugned order was passed by the High Court affirming the conviction and part of the sentence.

Learned counsel for the appellants submitted that the accused have been convicted in utter violation of mandatory provisions of Section 138 and 141 of the Negotiable Instrument Act. According to the accused-appellants, their office President and Secretary of Adiwasi Machua Samiti, Sirsida issued the cheque on behalf of Adiwasi Machua Samiti, Sirsida. It is contended that the appellants could be convicted for having committed offence under Section 138 of the Act and should not have been convicted in absence of the Adiwasi Machua Samiti, Sirsida on whose behalf the cheque in question was issued. Learned counsel for the appellants relied on the decision of this Court in 'Aneeta Hada v. Godfather Travels and Tours Private Limited' (2012) 5 SCC 661 and followed by this Court in Anil Gupta v. Star India Private Limited and Another (2014) 8 SCALE 480. In Aneeta Hada's case [2012 (5) SCC 661], the Court, inter alia, held:

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53. It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant.

7

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58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada is overruled with the qualifier as stated in para 51. The decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us hereinabove."

Learned counsel appearing on behalf of the respondent while accepting that Adiwasi Machua Samiti, Sirsida on whose behalf cheque was issued was not implicated as accused before the trial court, contended that judgment in Aneeta Hada's case cannot be made applicable retrospectively in respect of cases where the conviction took place much prior to the judgment. However, such objection cannot be raised in the present case. Though judgment in Aneeta Hada's is prospective

8

but is applicable in all pending cases, including the

Mr. Apoorva Singhal, Adv.
Mr. Devendra Singh, Adv.

Mr. Charu Ambwani, Adv.
Mr. Prashant Kumar, Adv.

For Respondent(s)

Mr Charu Ambwani, Adv.
Mr. Prashant Kumar, Adv.
M/s. Ap & J Chambers, Advs.

10

Mr. Shailendra Singh, Adv.
Mr. Aviral Kashyap, Adv.
Mr. Kaushal Yadav, Adv.

Mr. Ashok Jain, Adv.
Mr. Pankaj Jain, Adv.
Mr. B. K. Jain, Adv.

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

Criminal Appeal No. 400/ 2015 @SLP (Crl.) No.6422/ 2012

Criminal Appeal No. 401/ 2015 @SLP (Crl.) No.9695/ 2012)

Leave granted.

The appeals are allowed in terms of the signed order.

Writ Petition (Criminal) No. 138 of 2014

The writ petition is dismissed.

However, question of law is left open for
determination in an appropriate case.

(Nidhi Ahuja)
COURT MASTER

(Suman Jain)
COURT MASTER

11

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The appellant is the accused whereas the respondent is the complainant before the trial court. The accused-Ajith Balse is said to be the Managing Director of Tim Tim Far East Export Trading Company Private Limited, Patalganga, Raigad District, Maharashtra, whereas the complainant is the Managing Partner of a concern by name Yermal Fish Trading (YFT), carrying on the business of supplying fishes. An agreement was reached on 19.09.2001

12

between the company Tim Tim Far East Export Trading Company Private Limited and Yermal Fish Trading, wherein the complainant has supplied beheaded and gutter 'Rani fish' to the accused company. The accused was paying the amount through telegraphic transfer and under the terms of the agreement, the complainant was to send the statement of accounts by fax for every 15 days. At the end of fishing season, i.e., on 04.06.2002, the complainant sent the final statement, under which the accused was liable to pay Rs.73,24,710-00 to the complainant. The accused had called the complainant to his company on 02.08.2002 to settle the debt and at that time, the accused issued three cheques of the State Bank of India (1) bearing No.511693 dated 14.08.2002 for Rs.20 lakhs, (2) bearing No.511694 dated 05.09.2002 for Rs.15 lakhs and (3) bearing No.511695 dated 17.09.2002 for Rs.20 lakhs. The accused on behalf of the company had undertaken to settle the balance amount of Rs.18,24,710/- during the next fishing season.

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13

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14

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Before the trial court, the appellants-accused have taken the defence that the alleged cheque was not duly recovered but it was security of loan. After hearing both the parties, judicial magistrate, First Class, District Dhamtari, Chhattisgarh, convicted the accused-appellant

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and sentenced as aforementioned.

The conviction and sentence was upheld by the appellate court. Challenging the judgment passed by the High Court and the appellate court, the accused-appellants preferred Criminal Revision No. 305 of 2012 wherein the impugned order was passed by the High Court affirming the conviction and part of the sentence.

Learned counsel for the appellants submitted that the accused have been convicted in utter violation of mandatory provisions of Section 138 and 141 of the Negotiable Instrument Act. According to the accused-appellant, their office President and Secretary of Adiwasi Machua Samiti, Sirsida issued the cheque on behalf of Adiwasi Machua Samiti, Sirsida. It is contended that the appellants could be convicted for having committed offence under Section 138 of the Act and should not have been convicted in absence of the Adiwasi Machua Samiti, Sirsida on whose behalf the cheque in question was issued. Learned counsel for the appellants relied on the decision of this Court in 'Aneeta Hada v. Godfather Travels and Tours Private Limited' (2012) 5 SCC 661 and followed by this Court in Anil Gupta v. Star India Private Limited and Another (2014) 8 SCALE 480. In Aneeta Hada's case [2012 (5) SCC 661], the Court, inter alia, held:

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59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act,

VERSUS

CAPT.RANGA KARKERE

Respondent(s)

(with appln. (s) for directions and interim bail and interim stay and office report)

WITH
SLP(Crl) No. 9695/2012
(With appln.(s) for stay and appln.(s) for permission to file additional documents and Office Report)

W.P.(Crl.) No. 138/2014
(With appln.(s) for amendment of the petition and Office Report)

Date : 24/02/2015 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA
HON'BLE MR. JUSTICE N.V. RAMANA

For Petitioner(s)
Mr. Ravindra Keshavrao Adsure, Adv.
Mr. Sanchar Anand, Adv.
Mr. Apoorva Singhal, Adv.
Mr. Devendra Singh, Adv.
Mr. Charu Ambwani, Adv.
Mr. Prashant Kumar, Adv.

For Respondent(s)
Mr Charu Ambwani, Adv.
Mr. Prashant Kumar, Adv.
M/s. Ap & J Chambers, Advs.
Mr. Shailendra Singh, Adv.

20

Mr. Aviral Kashyap, Adv.
Mr. Kaushal Yadav, Adv.

Mr. Ashok Jain, Adv.
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UPON hearing the counsel the Court made the following
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The appeals are allowed in terms of the signed order.

Writ Petition (Criminal) No. 138 of 2014

The writ petition is dismissed.

However, question of law is left open for determination in an appropriate case.

(Nidhi Ahuja)
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