Case No. 30

2000 (IV) CTC 432

IN THE SUPREME COURT OF INDIA

Syed Shah Mohammed Quadri and S.N.Phukan, JJ

Arising out of SLP (Crl.) No. 206 of 2000
12.09.2000

K.P.G. Nair — Appellant

Vs

M/s Jindal Menthol India Ltd. — Respondent

Section 138 and I4l of the N.I. Act - Words of Section I4l (1) need not be incorporated in a complaint as magic words - substance of the complaint read as whole should answer and fulfil the requirements of the ingredients of Section 141 - if complaint does not make out a case that at the time of commission of offence the concerned accused was in charge of and was responsible to the company for the conduct of the business then complaint liable to be quashed.

ORDER

1. Leave is granted

2. The appellant Challenges the validity of the order passed by the High Court of Delhi in Criminal Miscellaneous Petition No. 3179 of 1999, dated December 16, 1999. By the said order, the High Court dismissed the petition filed by the appellant under Section 482 to quash the criminal proceedings emanating from the complaint filed by the respondent-Company against him and other under Section 138 of Negotiable Instruments Act. The High Court took the view that the averments made in the complaint read along with the statement of the witness, prima facie, go to show that at the relevant time, the appellant being the Director of he accused Company, was also in charge of and responsible for the business of the accused Company.

3. Mr. V.R. Reddy, the learned senior Counsel appearing for the appellant submits that a plain reading of the relevant allegations made in the complaint do not even, prima facie make out a care against the appellant. He argues that it is not a case where the appellant has signed the cheques himself; he is sought to be prosecuted in view of the provisions of Section 141 of N.I. Act as he happened to be the Director of

the accused Company at one point of time. Mr. Arora, the learned Counsel appearing for the complainant Company-respondent contends that from the allegations in the complaint, it has to be inferred that the appellant was in charge of and was responsible to the company for the conduct of the business of the accused Company at the time the offence was committed.

4. To appreciate the contentions of the learned Counsel, it would be necessary to briefly narrate the facts giving rise to this appeal.

5. The accused Company issued two cheques on March 15, 1998 and another cheque on March 24, 1998. Those cheques were presented on May, 1998 but were returned dishonoured on May 14, 1998. The respondent-Company issued notice to 7 persons including the appellant on May 29, 1998, requiring them to pay the amounts of cheques which were dishonoured on May 14, 1998. It is stated that the appellant sent a reply on June 6, 1998 intimating, that he was not in charge of the affairs of the Company on the date of the alleged offence.

6. Be that as it may, the respondent-Company filed a complaint on 14th July, 1998. The relevant allegations against the appellant are contained in para II, which reads as follows:

> "That the, accused no. 1. is the Company, the accused no. 2. is the whole time Chairman, the accused no.3 is one of the Directors, who signed the share certificates on the date of issuance of the same and the three cheques which were issue to the complainant for the payment of the value of the preferential share on the date of maturity. Accused nos. 4 and 5 are the signatories of all the three cheques. All the accused persons hatched a conspiracy with a malafied intention to deceive the complainant to the tune Rs. 57 lacs, thereby committing an offence of cheating and are liable to be punished under Section 420/120-B IPC. All the accused persons are also responsible for the dishonourment of the cheques under the Negotiable Instruments Act and all are liable to be punished for the offences committed under Section 138 NIA. All the accused persons have failed to make the payment of the dishonoured cheques despite the legal notice which was sent by registered post"

7. From a perusal of the excerpts of the complaint, it is seen that where it is stated that on the date when the offence is alleged to have been committed, the appellant was in charge of or was responsible to the accused Company for the conduct

of its business. Here it will be appropriate to note Sub-section (1) of Section 141 which is in the following terms:

> " Section 141 (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,"

8. From a perusal of Section 141, it is evident that in case where a company committed offence under Section 138, then not only the Company but also every person who at time when the offence was committed, was in charge of and was responsible to the Company for the conduct of the business of the Company shall be deemed to be guilty of the offence and liable to be proceeded against and punished accordingly. It follows that a person other than the Company can be proceeded against under those provisions, only if that person was in charge of and was responsible to the Company for the conduct of its business.

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 fulfill the requirements of the ingredients of the said provision (for being proceeded against for an offence which he is alleged 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.

10. In that view of the matter, the High Court has misdirected itself and committed an error in coming to the conclusion that the requirements of Section 141 are primafacie satisfied insofar as the appellant is concerned. Therefore, we allow the appeal, set aside the impugned order of the High Court and quash the proceedings in question as against the appellant alone.