

Case No. 26

(2002) 7 Supreme Court Cases 655

(BEFORE S. RAJENDRA BABU AND P.VENKATARAMA REDDI, JJ)

KATTA SUJATHA (SMT)

Appellant

Vs

FERTILIZERS & CHEMICALS TRAVANCORE LTD  
AND ANOTHER

Respondents

Criminal Appeal No. 855 of 2002, decided on August 23, 2002

Complaint under Section 138 of the N.I. Act - No averment that a certain partner is incharge of the business and was responsible for the conduct of the business in terms of Section 141 of the Act - Complaint liable to be quashed.

State of Karanataka v. Pratap Chand, (1981) 2 SCC 335 : 1981 SCC (Cri) 453 : (1981) 3 SCR 200; K.P.G. Nair v. Jindal Menthol India Ltd., (2001) 10 SCC 218 : 2002 SCC (Cri) 1038; Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1, followed

Appeal allowed

H-M/Z/2674/CR

Chronological list of case cited

on page(s)

1. (2001) 10 SCC 218 : 2002 SCC (Cri) 1038 : (2000) 6 Scale 578,  
K.P.G. Nair v. Jindal Menthol India Ltd. 656f-g
2. (2000) 1 SCC 1 : JT (1999) 9 SC 223, Anil Handa v. Indian Acrylic Ltd. 656f-g
3. (1981) 2 SCC 335 : 1981 SCC (Cri) 453 : (1981) 3 SCR 200.  
State of Karnataka v. Pratap Chand 656c-d

ORDER

1. Leave granted.

2. A complaint was filed in the Court of IVth Additional Munsif Magistrate, Guntur that the firm (the respondent) and three other persons named therein as accused have committed certain acts which attract the provisions of Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred as "the Act")

3. The complaint set out that a cheque had been issued on behalf of the firm, 1<sup>st</sup> accused by T. Satyanarana, 3<sup>rd</sup> accused but did not specifically attribute any particular act done by the 4<sup>th</sup> accused, who is the appellant before us.

4. The trial court having proceeded with the matter, a petition was filed under Section 482 CrPC for quashing the complaint. The said petition having been dismissed this appeal is filed by special leave. It is necessary to state that the special leave petition filed by others has been dismissed by our order dated 15-02-2002. The contention urged before the High Court was that all of them are not responsible for the conduct of the business of the firm and only T. Satyanarana, 3<sup>rd</sup> accused was in charge of the firm, first accused. Whether it is so or not, is not for us to examine at this stage of the matter. However, one thing is clear that the appellant was in no way involved in any of the transactions referred to in the complaint and it was stated that she was in charge of the business and was responsible for the conduct of the business of the firm in terms of section 141 of the Act nor was there any other allegation made against the appellant that she had connived with any other partner in the matter of issue of cheque. In these circumstances the High Court ought to have examined the matter from this angle but on the other hand, the High Court merely stated that all the accused are not only in charge but are responsible for the conduct of the business of the firm. Indeed the same question has come up before this Court for examination in *State of Karnataka v. Pratap Chand* wherein question as who is a "person in charge" of the business of a firm in the context of Section 18-A, Drugs and Cosmetics Act, 1940 was considered by this Court. This Court explained the meaning by observing that the term "person in charge" must mean that the person should be in overall control of the day-to-day business of the company or firm. The person should (sic may) be a party to the policy being followed by a company and yet not be in charge of the business of the company or may be in charge of but not in overall charge or may be in charge of only some part of the business.

5. In short the partner of a firm is liable to be convicted for an offence committed by the firm if he was in charge of and was responsible to the firm for the conduct of the business of the firm or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the partner concerned.

6. To the same effect is the decision of this Court in *K.P.G. Nair v. Jindal Menthol India Ltd.* and *Anil Handa v. Indian Acrylic Ltd.* Examined in the light of these decisions and the law enunciated, we find no case as such has been made out

for proceeding against the appellant.

7. The appeal is allowed and the order of the High Court is set aside so far as the appellant before us is concerned. Proceedings in the criminal case are quashed insofar as the appellant before us is concerned.