ABC 2019 (II) 260 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(N.V. Ramana, Mohan M. Shantanagoudar & Indira Banerjee, JJ.)
Criminal Appeal Nos. 403-405 of 2019
(Arising out of SLP(Crl.) Nos.9626-28 of 2017)
(From Andhra Pradesh & Telangana High Court)
Decided On 28 February, 2019

A.R. RADHA KRISHNA ***- Appellant(s).***

Versus

DASARI DEEPTHI & ORS. ***- Respondent(s).***

Law Covered:- ***(A) Negotiable Instruments Act, 1881 — Sections 138 & 141 — offence under — Essential requirements — the complaint must contain a specific averment that the Director was in charge of, and responsible for, the conduct of the company's business at the time when the offence was committed. (Para 9)***

(B) Code of Criminal Procedure, 1973 — Section 482 — Negotiable Instruments Act, 1881 — Sections 138 & 141 —Quashing of petition of Director of a company — Duty of the High Court — Held, the High Court must consider whether the averment made in the complaint is sufficient — or if some unimpeachable evidence has been brought on record which leads to the conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time. (Para 9)

(C) Negotiable Instruments Act, 1881 — Section 141 — Offence by a Company — Role of a Director — establishing of — Held, the role of a Director in a company is ultimately a question of fact, and no fixed formula can be fixed for the same. (Para 9)

(D) Code of Criminal Procedure, 1973 — Section 482 — Inherent power of the High Court — Held, the High Court must exercise its power u/s 482 — when it is convinced, from the material on record, that allowing the proceedings to continue would be an abuse of process of the Court. (Para 9)

(E) Pleading & Drafting — Code of Criminal Procedure, 1973 — Section 482 — Negotiable Instruments Act, 1881 — Section 138 — Complaint under — Specific averments by the complainant — that the respondents were actively participating in the day-today affairs of the accused company— the accused were from the same family &

running the accused company together— Specific averment that all the accused, in active connivance, mischievously and intentionally issued the cheques and later issued instructions to the Bank to "Stop Payment"— Order of quashing set aside. (Para 10)

(F) Code of Criminal Procedure, 1973 — Section 482 — Inherent power of the High Court — Standard of proof — No evidence of unimpeachable quality brought on record by the respondents to indicate that allowing the proceedings to continue would be an abuse of process of the court — Order of quashing set aside. (Para 10)

Facts:- *The case of the prosecution in brief is that the appellant had entered into an investment agreement with accused Company. the accused company issued seven cheques in favour of the appellant, for repayment of the amount invested by him, which were returned dishonored, on presentation by the appellant, with the remark "Payment stopped by Drawer". Thereafter, the appellant issued a legal notice to the company and the Directors. Consequently, proceedings were initiated u/s 138 & 141 of the NI Act. During the pendency of the said complaint, the respondent nos. 1 and 2 made an application before the High Court for the quashing of the proceedings initiated against them. The High Court allowed the Criminal Petitions and quashed the proceedings against them. Being aggrieved, the appellant approached the honourable Supreme Court through the instant appeals.*

It was observed by the honurable Court that the appellant specifically averred in his complaint that the respondent nos. 1 and 2 were actively participating in the day-today affairs of the accused no.1 company. It was also specified that all the accused, in active connivance, mischievously and intentionally issued the cheques in favor of the appellant and later issued instructions to the Bank to "Stop Payment". Order of the High quashing the proceedings was set aside and that of the trial court is restored.

Held:- Having heard learned counsel for the parties and carefully scrutinizing the record, we are of the considered opinion that the High Court was not justified in allowing the quashing petitions by invoking its power under Section 482, Cr.P.C., 1973 In a case pertaining to an offence under Section 138 and Section 141 of the Act, the law requires that the complaint must contain a specific averment that the Director was in charge of, and responsible for, the conduct of the companys business at the time when the offence was committed. The High Court, in deciding a quashing petition under Section 482, Cr.P.C., 1973 must consider whether the averment made in the complaint is sufficient or if some unimpeachable evidence has

been brought on record which leads to the conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time. While the role of a Director in a company is ultimately a question of fact, and no fixed formula can be fixed for the same, the High Court must exercise its power under Section 482, Cr.P.C., 1973 when it is convinced, from the material on record, that allowing the proceedings to continue would be an abuse of process of the Court. [See ***Gunamala Sales Private Limited v. Anu Mehta and Ors., (2015) 1 SCC 103***] (Para-9)

A perusal of the record in the present case indicates that the appellant has specifically averred in his complaint that the respondent nos. 1 and 2 were actively participating in the day-today affairs of the accused no.1 company. Further, the accused nos. 2 to 4 (including the respondent nos. 1 and 2 herein) are alleged to be from the same family and running the accused no.1 company together. The complaint also specificies that all the accused, in active connivance, mischievously and intentionally issued the cheques in favor of the appellant and later issued instructions to the Bank to "*Stop Payment*". No evidence of unimpeachable quality has been brought on record by the respondent nos. 1 and 2 to indicate that allowing the proceedings to continue would be an abuse of process of the court. (Para-10)

Counsel:- ***For Appellant(s):*** *Mr. Y. Raja Gopala Rao, Mr. B. Mohan, Ms. Y. Vismai Rao, Mr. K. Sharat Kumar, Advs.*

For Respondent(s): *Mr. Kaushal Yadav, Ms. Sunita Yadav, Mr. Nand Lal Kumar Mishra, Ms. Ankita Aggarwal, Ms. Shweta Yadav, Mr. S. Udaya Kumar Sagar, Ms. Bina Madhavan, Advs.*

Cases Referred:-

Gunamala Sales Private Limited v. Anu Mehta and Ors., (2015) 1 SCC 103, (Para-9)

ORDER

1. Leave granted.

2. These appeals, by special leave, are directed against the order dated 22.09.2017 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Criminal Petition Nos. 6508, 6530 & 6531 of 2017, whereby the High Court allowed the Criminal Petitions filed by respondent nos. 1 and 2 and set aside the cognizance order passed by the trial court.

3. The case of the prosecution in brief is that the appellant had entered into an investment agreement with M/s Dhruti Infra Projects Limited (accused no.1) on 01.12.2013 on the basis of representation of respondent nos. 1 and 2 herein, who were the Directors of the said Company. The appellant invested a total amount of Rs. 2,11,50,000/- in the said project. According to the appellant, as on 31.03.2016, a total amount of Rs. 1,81,50,000/- was left to be repaid to him along with applicable interest on it. Thereafter, upon several representations by the appellant, M/s Dhruti Infra Projects Limited agreed to repay the amount via issue of seven cheques in favour of the appellant. Six cheques for Rs. 25,00,000/- each and one cheque for Rs. 30,00,000/- were drawn on different dates by the authorised signatory, i.e., M.D. of M/s Dhruti Infra Projects Limited, which were returned dishonored, on presentation by the appellant, with the remark "*Payment stopped by Drawer*".

4. Thereafter, the appellant issued a legal notice on 04.08.2016 to (i) M/s Dhruti Infra Projects Limited (accused no. 1); (ii) M.D. of M/s Dhruti Infra Projects Limited (accused no. 2); (iii) Respondent No. 1 and Respondent No. 2 (as Directors).

5. Consequently, proceedings were initiated by the appellant under Sections 138 & 141 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act). During the pendency of the said complaint, the respondent nos. 1 and 2 made an application before the High Court for the quashing of the proceedings initiated against them. The High Court, as mentioned above, allowed the Criminal Petitions filed by respondent nos. 1 and 2 and quashed the proceedings against them. Being aggrieved, the appellant has approached this Court through the instant appeals.

6. Learned counsel for the appellant, Mr. Y. Rajagopala Rao vehemently contended that the High Court was not justified in allowing the quashing petitions by invoking its power under Section 482 Cr.P.C., 1973 despite the fact that a *prima facie* case was made out against respondent nos. 1 and 2 in the complaint filed by the appellant. He contended that the trial court, on the basis of the material on record, took cognizance of the case against respondent nos. 1 and 2 under Sections 138 and 141 of the Act. Learned counsel for the appellant further submitted that all the accused, in active connivance, mischievously and intentionally issued the cheques in favor of the appellant and later issued instructions to the Bank to "*Stop Payment*".

7. On the other hand, learned counsel for the respondents, Mr. Kaushal Yadav submitted that the answering respondents are only non-executory Directors of the company, neither playing any role in the conduct of day-to-day business of the company nor being in charge of the affairs of the company. Further, he also contended that merely by virtue of being a Director in a company, one cannot be deemed to be in charge of, or responsible to, the company for the conduct of its business.

8. In any case, the learned counsel for the respondents further submitted that his clients are ready to pay the balance amount of Rs. 70,00,000/- to the appellant within a period of six months. However, learned counsel for the appellant did not agree to the same.

9. Having heard learned counsel for the parties and carefully scrutinizing the record, we are of the considered opinion that the High Court was not justified in allowing the quashing petitions by invoking its power under Section 482, Cr.P.C., 1973 In a case pertaining to an offence under Section 138 and Section 141 of the Act, the law requires that the complaint must contain a specific averment that the Director was in charge of, and responsible for, the conduct of the companys business at the time when the offence was committed. The High Court, in deciding a quashing petition under Section 482, Cr.P.C., 1973 must consider whether the averment made in the complaint is sufficient or if some unimpeachable evidence has been brought on record which leads to the conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time. While the role of a Director in a company is ultimately a question of fact, and no fixed formula can be fixed for the same, the High Court must exercise its power under Section 482, Cr.P.C., 1973 when it is convinced, from the material on record, that allowing the proceedings to continue would be an abuse of process of the Court. [See ***Gunamala Sales Private Limited v. Anu Mehta and Ors., (2015) 1 SCC 103***]

10. A perusal of the record in the present case indicates that the appellant has specifically averred in his complaint that the respondent nos. 1 and 2 were actively participating in the day-today affairs of the accused no.1 company. Further, the accused nos. 2 to 4 (including the respondent nos. 1 and 2 herein) are alleged to be from the same family and running the accused no.1 company together. The complaint also specificies that all the accused, in active connivance,

mischievously and intentionally issued the cheques in favor of the appellant and later issued instructions to the Bank to "*Stop Payment*". No evidence of unimpeachable quality has been brought on record by the respondent nos. 1 and 2 to indicate that allowing the proceedings to continue would be an abuse of process of the court.

11. In the above view of the matter, the instant appeals are allowed and the impugned order dated 22.09.2017, passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Criminal Petition Nos.6508, 6530 & 6531 of 2017, is set aside and that of the trial court is restored.

12. Before parting with the matter, we make it clear that we have not expressed any opinion on the merits of the case pending before the trial court. Needless to say, the trial court will adjudicate the matter on its own merits uninfluenced by any of the observations made herein.

13. However, keeping in view the nature of the case, we direct the trial court to expedite the trial and dispose of the same in accordance with law.

***Result*:-** Appeals allowed.

ABC 2019 (II) 265 SC

ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(A.K. Sikri & Ashok Bhushan, JJ.)

Criminal Appeal No. 803 of 2018

(Arising out of Slp(Crl.)No.10030 of 2016)

Decided on 02 July, 2018

KISHAN RAO ***- Appellant(s).***

Versus

SHANKARGOUDA ***- Respondent(s).***

Law Covered*:-** ***(A) Negotiable Instruments Act, 1881 — Section 138 — Defence by accused —cheque was stolen — rejected by the two courts below — Reversal by High Court — No evidence was led by the accused —Held, How the presumption u/s 139 can be rebutted not explained by the High court — Judgment of the High Court setting aside the conviction reversed. (Para 22)

(B) Negotiable Instruments Act, 1881 — Section 139 — Presumption under — Nature of — the presumption is rebuttable —