

Karnataka High Court

Mr. Kaningat Rajan vs M/S. Ample Technologies Private ... on 18 May, 2023

Bench: K.Natarajan

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.5245 OF 2022

BETWEEN

MR. KANINGAT RAJAN
S/O. LATE N. M. MENON,
AGED ABOUT 80 YEARS,
DIRECTOR,
I-VISTA DIGITAL SOLUTIONS PRIVATE LIMITED,
A-REGENCY PARK,
NO. 24, HALL ROAD,
RICHARDS TOWN,
BENGALURU-560 005. PETITIONER

(BY SRI V. SANJAY KRISHNA, ADVOCATE)

AND

1. M/S. AMPLE TECHNOLOGIES PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE
AT NO.91/1, 6TH A MAIN,
10TH CROSS, R.T. NAGAR,
BENGALURU-560 032,

DULY REPRESENTED BY ITS
AUTHORIZED SIGNATORY
MR. JAGANNATH. M. E.

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2. I-VISTA DIGITAL SOLUTIONS PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT

A-REGENCY PARK,
NO.24, HALL ROAD,
RICHARDS TOWN,
BENGALURU-560 005.
REPRESENTED BY ITS DIRECTOR
MR. NARAYAN RAJAN

3. MR. NARAYANA RAJAN
S/O. MR. KANINGAT RAJAN
AGED ABOUT 47 YEARS,
DIRECTOR,
I-VISTA DIGITAL SOLUTIONS PRIVATE LIMITED,
A-REGENCY PARK,
NO.24, HALL ROAD,
RICHARDS TOWN,
BENGALURU-560 005.

... RESPONDENTS

(BY SRI PARINA LALLA, ADVOCATE FOR
SRI H.N. NARENDRA DEV, ADVOCATE FOR R1;
R2 AND R3 SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C. PRAYING TO QUASH THE COMPLAINT FILED BY THE
1ST RESPONDENT IN P.C.R.NO.636/2020 ALONG WITH THE
TRIAL COURT ORDER DATED 06.03.2020 THEREIN AND
SUBSEQUENT PROCEEDINGS IN C.C.NO.4639/2020 BEFORE
THE HONOURABLE XXVIII ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, BENGALURU AS AGAINST THE PETITIONER.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 20.04.2023, THIS DAY, THE COURT
PRONOUNCED THE FOLLOWING:

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ORDER

This petition is filed by the petitioner-accused No.3 under Section 482 of Cr.P.C. for quashing the criminal proceedings in C.C.No.4639/2020, pending on the file of XXVIII ACMM, Bengaluru, arising out of PCR No.636/2020.

2. Heard the arguments of learned counsel for the petitioner and learned counsel for the respondent for respondent No.1.

3. The case of the petitioner is that the respondent has filed a private complaint under Section 200 of Cr.P.C. read with Section 138 of the Negotiable Instrument Act, 1881 (for short 'N.I. Act'), alleging that the cheque was issued by the company-accused No.1 and accused No.2 and 3 are the Directors of the company. The cheque was dishonored. Hence, the complaint came to be filed. The trial Court

took the cognizance against accused Nos.1 to 3 and issued summons. Accused No.3-the present petitioner is challenging the criminal proceedings against him.

4. The learned counsel for the petitioner has contended that accused No.2 is the Managing Director of accused No.1-company. On behalf of accused No.1, accused No.2 has issued the cheque which was signed by accused No.2, therefore, the proceedings against accused No.3 is not sustainable. There is no specific averment made in the complaint that accused No.3 is responsible for day to day affairs. When there is no averment made in the complaint as required under Section 141(2) of N.I. Act, the criminal proceedings cannot be sustained against the petitioner. Hence, prayed for quashing the proceedings. In support of the arguments, the learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of S.M.S. Pharmaceuticals Ltd., vs. Neeta Bhalla and Another reported in (2005) 8 SCC page 89.

5. Per contra, learned counsel for the respondent has objected the petition and contended that this petitioner is accused No.3, accused Nos.2 and 3 are the Managing Director and Director of the accused No.1-

company. Though, accused No.2 was signatory to the cheque, but the cheque was issued for discharging the liability of the company. At paragraph No.4 of the complaint, it is categorically mentioned that they are the in charge of the day to day affairs of the company and the petitioner Nos.2 and 3 are none other than the son and father, it is their own family business. Therefore, both are responsible for the affairs of the company and responsible for discharging the liability of the company. Hence, prayed for dismissing the petition. The respondent Counsel relied upon the judgment of Supreme Court in the case of S.P. Mani and Mohan Dairy Vs. Dr. Snehalatha Elangovan reported in 2022 SCC OnLine SC 1238.

6. Having heard the arguments and on perusal of the records, the Hon'ble Supreme Court in the case of S.M.S Pharmaceuticals limited stated supra has held at paragraph No.19 of the judgment as under:

"19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub- para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant

time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

7. The Hon'ble Supreme Court in the case of S.P.Mani and Mohan Dairy vs. Dr. Snehalatha Elangovan reported in 2022 SCC OnLine SC 1238, has held at paragraph No.47 as under:

"47. Our final conclusions may be summarised as under:

a.) The primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. On the other hand, the first proviso to sub-section (1) of Section 141 of the Act clearly lays down that if the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

b.) The complainant is supposed to know only generally as to who were in charge of the affairs of the company or firm, as the case may be. The other administrative matters would be within the special knowledge of the company or the firm and those who are in charge of it. In such circumstances, the complainant is expected to allege that the persons named in the complaint are in charge of the affairs of the company/firm. It is only the Directors of the company or the partners of the firm, as the case may be, who have the special knowledge about the role they had played in the company or the partners in a firm to show before the court that at the relevant point of time they were not in charge of the affairs of the company. Advertence to Sections 138 and Section 141 respectively of the NI Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company/partners of a firm to show that they were not liable to be convicted. The existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial to show that at the relevant time they were not in charge of the affairs of the company or the firm.

c.) Needless to say, the final judgment and order would depend on the evidence adduced. Criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. But vicarious criminal liability can be inferred against the partners of a firm when it is specifically averred in the complaint about the status of the partners 'qua' the firm. This would make them liable to face the prosecution but it does

not lead to automatic conviction. Hence, they are not adversely prejudiced if they are eventually found to be not guilty, as a necessary consequence thereof would be acquittal.

d.) If any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he/she is really not concerned with the issuance of the cheque, he/she must in order to persuade the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his/her contention. He/she must make out a case that making him/her stand the trial would be an abuse of process of Court."

8. By keeping the principles laid down by the Hon'ble Supreme Court in the above said judgments, the complainant required to make averments in the complaint that accused Nos.2 and 3 are responsible for the day to day affairs of the company and if the averment is made in the complaint, the accused require to establish that he is not the responsible person and without his knowledge, the offence has been committed. Looking to the case on hand, where-in at paragraph Nos.4 and 5 of the complaint, it is categorically mentioned that accused Nos.2 and 3 are the Directors of accused No.1-company and they are responsible for the day to day affairs of the company. The liability of the company also referred in paragraph Nos.5 to 7 of the complaint and admittedly, only these accused Nos.2 and 3 are the Directors of accused No1-company.

That apart, accused No.2 is the son and accused No.3 is the father, both of them are from same family looking after the affairs of the company. If at all, this petitioner had no knowledge about the affairs of the company and liability of the company, then he has to establish by giving rebuttal evidence to show that he is not the in charge of the company. That apart, the petitioner has not produced any Memorandum of Association and Articles of Association of the company to show that this petitioner is not responsible for any day to day affairs of the company.

Therefore, the contention of the petitioner cannot be acceptable that he is not responsible for the affairs of the company and he has to face the trial and to establish the same before the Trial Court. Such being the case, it is not a fit case for quashing the criminal proceedings.

9. Accordingly, the criminal petition filed by petitioner-accused No.3 is hereby dismissed.

Sd/-

JUDGE GBB