



INDIALAW

NEGOTIABLE INSTRUMENT

Krishna Texport & Capital Markets Ltd. vs. Ila A. Agrawal & Ors.

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PUBLISHED 10 May 2015

The Negotiable Instrument Act, 1881 ('Act') has a history of being one of the oldest acts to be in existence since the time "British Raj" came to its end in India and also an act, the interpretation of which has been a concern of constant modifications in various cases time and again.

In a recent case of *Krishna Texport & Capital Markets Ltd. vs. Ila A. Agrawal & Ors*^[1]. The Honorable Supreme Court of India in its attempt to clarify the issues pertaining to Section 138 of the Act overruled the judgment of the Division Bench of Madras High Court in *B. Raman & Ors. Vs. M/s. Shasun Chemicals and Drugs Ltd.*^[2], wherein it was concluded by the Honorable High Court that the service of Notice as envisaged under Section 138 to all the Directors and persons concerned is a mandatory obligation before a complaint could be filed against any wrong committed on their part. Further, it was added by the Honorable High Court that a non-compliance of such a mandatory requisite would outlaw the legal proceedings of any kind against the Directors.

The instant Criminal "Appeal by Special Leave" is directed against the order dated 6.5.2008 passed by the Honorable High Court of Judicature at Bombay rejecting Criminal Application No. 2174 of 2007. In the case a notice under Section 138 of the Act was issued on behalf of the appellant to M/S Indo French Bio Tech Enterprises Ltd ('Company') on 14.09.1996. The notice stated that a cheque bearing No. 364776 dated 8.9.1996 drawn by the Company on Dena Bank, New Marine Lines, Mumbai in favour of the appellant returned on 10.9.1996 with endorsement "funds insufficient". The notice therefore was called upon the addressee to make the payment of the cheque amount within 15 days of the receipt of the notice so furnished. The aforesaid notice remained un-reverted. The appellant thereafter filed Complaint Case No. 243/S/1996 before the Additional Chief Metropolitan Magistrate, 5th Court at Dadar, Mumbai against the Company, Mr. K.J. Bodiwala, the Chairman and Managing Director of the Company and 11 other directors including respondent nos. 1 and 2 namely Ms. Ila A. Agrawal and Mr. Prafulla Ranadive. In so far as the directors are concerned, it was averred that they were in-charge of the business of the Company and its day to day affairs and were hence liable. During the pendency of said complaint case, the process issued against Accused Nos. 3 to 5, 7, 9 to 13 was recalled and due to the death of one of the Directors, Mr. Bodiwala the proceedings as against him also abated, which left the Company and the present respondent nos. 1 and 2, Accused Nos. 6 and 8 respectively, in the array of accused.

Appellant stated that the separate notices to the directors were additionally issued but at the stage of evidence it turned out that no individual notices were given to the directors pertaining to the aforesaid cheque. The Metropolitan Magistrate vide order dated 30.4.2007 convicted the Company but acquitted respondent nos. 1 and 2.

The Metropolitan Magistrate relied upon the judgment of the B. Raman case^[3], and decided that notice under Section 138 of the Act was required to be issued to every Director and for non-compliance of such mandatory requirement, respondent nos. 1 and 2 could not be held responsible and not to be proceeded against. The appellant being aggrieved filed Criminal Application No. 2174 of 2007 in the High Court seeking leave to prefer appeal against the judgment acquitting respondent nos. 1 and 2. The High Court also relied on the judgment of the Division Bench of Madras High Court in B. Raman case^[4] that it to be mandatory to have issued separate notices to all the directors and vicarious liability of the offence under Section 138 of the Act cannot be fixed upon them without serving the separate notice. The High Court had taken the same view and dismissed the appeal.

The Honorable Supreme Court while deciding the question whether the notice under Section 138 of the Act is mandatorily required to be sent to the directors of a Company before a complaint could be filed against such directors along with the Company observed that there is nothing in Section 138 of the NI Act which may even remotely suggest issuance of notice to anyone other than the drawer. The Honorable Supreme Court went through the interpretation of the Sections 138 and 141. While interpreting the Section 141 of the Act, the Supreme Court explained that plain reading of Section 141 of the Act provides that if the person committing an offence under Section 138 is a Company, every director of such Company who was in charge of and responsible for its affairs and who guided actions to that Company for conduct of its business shall also be deemed to be vicariously liable as company is a juristic entity. Section 141 of the Act does not provide any requirement to send notices separately to the directors.

Directors, who are in charge of the affairs of the Company and responsible for the affairs of the Company, would be aware of the receipt of notice by the Company under Section 138. Therefore, the Apex Court held that Section 138 of the Act does not admit of any necessity or scope for reading into it the requirement that the directors of the Company in question must also be issued individual notices under Section 138 of the Act. Hence the appeal is allowed. The Honorable Supreme Court overruled the decision of the Division Bench of the Madras High Court^[5] and remits the matter to High Court for fresh consideration.

The judgment, if critically analyzed can take a heavy toll on the Company holders and the Institution runners for the interpretation of Section 138 of the Act been in a manner as concluded by the Apex Court would in a way bring in question the credibility of the director/person not genuinely liable for the wrong. Therefore, it is hereby opined on a personal level that the Judgment needs some further consideration on the issue and a serious attempt towards the consolidation of the “section in question”.

[1] *CRIMINAL APPEAL NO.1220 of 2009 decided on 06.05.2015*

[2] *2006 Cril. L.J. 4552*

[3] *B. Raman & Ors. Vs. M/s. Shasun Chemicals and Drugs Ltd,2006 Cril. L.J. 4552*

[4] *Ibid*

[5] *ibid*