

Criminal Revision
PRESENT:
The Hon'ble Justice Ashim Kumar Roy

C.R.R. No. 1008 of 2010

R. B. Hosiery
versus
The State of West Bengal & Anr.

JUDGMENT ON: 23.07.2010

Point:

PROSECUTION, PARTNERSHIP FIRM: Whether a partnership firm can be proceeded against for alleged commission of an offence punishable under Section 138 of the Negotiable Instruments Act, without its partner being prosecuted for their vicarious liability - Negotiable Instruments Act, 1881 S.138, the General Clauses Act, 1897, S. 3 (42).

Fact: The petitioner, which is a partnership firm, filed the instant criminal revisional application under Section 482 of the Code of Criminal Procedure the petitioner, a partnership firm has challenged for quashing of its prosecution initiated under Section 138 of the Negotiable Instruments Act mainly on the grounds that after dishonour of the cheque no demand notice was issued against the partners of the firm and without they being prosecuted, the impugned prosecution has been launched against the firm alone and the transaction of Negotiable Instruments is nothing but a contract and no contract can be entered into with a party who has no legal entity.

Held:

A combined reading of Section 3 (42) of the General Clauses Act, 1897, according to which “persons” shall include any company or association or body of individuals whether incorporated or not and the Explanation – (a) to Section 141 of the Negotiable Instruments Act which includes a partnership firm within the meaning of company together with provisions of Section 138 of the

Negotiable Instruments Act, a partnership firm can very well be prosecuted for an offence punishable under Section 138 of the Negotiable Instruments Act, simplicitor independently and without its partners being proceeded against along with the firm with the aid of Section 141 of the said Act. There is no statutory compulsion under the scheme of the Negotiable Instruments Act for prosecution of a juristic person, here a partnership firm, its partners are also to be jointly prosecuted along with such firm. The scheme of the special statute also does not lay down any condition that a firm cannot be prosecuted separately if the partners are not prosecuted. Either the partners who are in-charge of the business of the accused partnership firm and responsible to it for conducting its day to day business or such partnership firm separately as well as they can together be prosecuted for an offence punishable under Section 138 of the Negotiable Instruments Act whether its partners have been proceeded against along with the firm or not is of no legal consequences. Therefore, the impugned prosecution of the partnership firm without its partners being proceeded against is absolutely lawful and does not deserve any interference. (Paragraph – 7)

For Petitioner : Mr. Prantick Ghosh

For O.P. No. 2: Mr. Koushik Chatterjee

The Court: In this criminal revisional application under Section 482 of the Code of Criminal Procedure the petitioner, a partnership firm has challenged the legality and validity of its prosecution under Section 138 of the Negotiable Instruments Act and sought for quashing of the same.

2. Heard the learned advocates appearing on behalf of the parties. Perused the grounds relied upon in support of the prayer for quashing and the pleadings in the application. Considered their respective submissions and case laws cited by them.

3. The grounds on which the aforesaid criminal prosecution has been challenged are as follows;

(a) After dishonour of the cheque no demand notice was issued against the partners of the firm and without they being prosecuted, the impugned prosecution has been launched against the firm alone.

(b) The transaction of Negotiable Instruments is nothing but a contract and no contract can be entered into with a party who has no legal entity.

(c) No notice was issued against the drawer/signatory of the cheque.

On the other hand, the learned advocate of the complainant/opposite party vehemently opposed the prayer for quashing.

4. This is a case where the impugned prosecution under Section 138 of the Negotiable Instruments Act has been launched against a partnership firm under Section 138 of the Negotiable Instruments Act following dishonour of a cheque for Rs. 25,977/- and when in spite of receipt of demand notice by the accused firm no payment has been made.

5. In this criminal revision only point that fell for consideration is to whether a partnership firm can be proceeded against for alleged commission of an offence punishable under Section 138 of the Negotiable Instruments Act, simplicitor, without its partner being prosecuted for their vicarious liability.

6. It is the case of the complainant that the cheque was issued for and on behalf of the present petitioner, a partnership firm in discharge of its liability accrued against an accommodation

loan which it took from the complainant's bank. The said cheque was drawn on an account maintained by the accused firm with its banker. Thereafter, when the cheque was dishonoured demand notice was issued to the said partnership firm and despite receipt of such notice no payment has been made.

7. A combined reading of Section 3 (42) of the General Clauses Act, 1897, according to which "persons" shall include any company or association or body of individuals whether incorporated or not and the Explanation – (a) to Section 141 of the Negotiable Instruments Act which includes a partnership firm within the meaning of company together with provisions of Section 138 of the Negotiable Instruments Act, I have no doubt that a partnership firm can very well be prosecuted for an offence punishable under Section 138 of the Negotiable Instruments Act, simplicitor independently and without its partners being proceeded against along with the firm with the aid of Section 141 of the said Act. There is no statutory compulsion under the scheme of the Negotiable Instruments Act for prosecution of a juristic person, here a partnership firm, its partners are also to be jointly prosecuted along with such firm. The scheme of the special statute also does not lay down any condition that a firm cannot be prosecuted separately if the partners are not prosecuted. Either the partners who are in-charge of the business of the accused partnership firm and responsible to it for conducting its day to day business or such partnership firm separately as well as they can together be prosecuted for an offence punishable under Section 138 of the Negotiable Instruments Act whether its partners have been proceeded against along with the firm or not is of no legal consequences. Therefore, the impugned prosecution of the partnership firm without its partners being proceeded against is absolutely lawful and does not deserve any interference.

8. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

9. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)