

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 686 OF 2004

VENKATESHWARAN & ANR.

.....APPELLANT(S)

Versus

M/S. SINGARAVEL YARN TRADERS

.....RESPONDENT(S)

ORDER

The present appeal is against the order passed by the High Court refusing to entertain the petition under Section 482 Cr.P.C. challenging the proceedings of complaint filed against the accused persons for the offence under Section 138 of Negotiable Instruments Act, 1881. The petition was filed on the ground that the appellants were not the partners and had nothing to do with the aforementioned firm which was accused No.1 in the complaint. The learned Judge has observed that it was not possible at this stage to ascertain as to whether the concerned appellants were the partners of the partnership firm and whether there was any partnership firm in existence. When we see the complaint filed in trial Court, it is very clearly stated as under:

“6. The second accused is guilty, as drawer of the cheque on behalf of Accused No.1, as its Managing Partner. The Accused Nos. 3 and 4 being partners of the Accused No.1, were in charge of and were responsible for the conduct of the business of Accused No.1, and shall also be deemed to be guilty of the offence.”

.....2.

Therefore, the question as to whether the present appellants, who were accused No.3

and 4, were the partners of the firm and were responsible for conduct of business is the disputed question of fact which could not have been gone into under Section 482 Cr.P.C. The High Court was absolutely right in not entertaining that question. It would be during the trial for the accused persons to urge that they were not in any way concerned with the said partnership firm. In our opinion, the High Court was absolutely right in dismissing the petition under Section 482 Cr.P.C.

2. The appeal has no merit and is dismissed.

.....J.
(V.S. SIRPURKAR)

New Delhi;
May 28, 2009.

.....J.
(R.M. LODHA)

JUDGMENT