

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 4-9-2015

Pronounced on : 8-9-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Criminal Original Petition No.6191 of 2014
M.P.Nos.1 and 3 of 2014

1. Suresh Pandari Nathan
2. Suresh Kanthimani Rekha ... Petitioners

Vs.

1. Sree Rajkondal Exports Enterprises,
New No.163, Old No.111A,
Sambandam Road West, R.S.Puram,
Coimbatore - 641 002,
rep.by its Authorised Signatory/Power Agent,
A.Sivasubramaniam
2. V.G.S.Design House Pvt. Ltd.,
having registered office at
H.N.O.C.595, Sushant Lok-1,
Block "C" First Gurgaon,
Gurgaon District - 122 001,
Haryana State, India
3. Dhandapani Selvaraj ... Respondents

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records in proceedings STC No.828/2012 (now transferred and renumbered as C.C.No.762/2013 on the file of Fast Track-I, Coimbatore) on the file of the Judicial Magistrate-I at Coimbatore and quash the same with regard to the petitioner/accused.

(Prayer amended as per order of this Court dated 24.3.2014)

For Petitioner : Mr.A.Rajendrakumar
for M/s.G.Vijay Anand Associates

For 1st Respondent: Ms.P.T.Asha,
for M/s.Sarvabhauman Associates

O R D E R

For the sake of convenience, the parties will be referred to as 'the Complainant' and 'the accused'.

2. It is the case of the Complainant that they are into the business of exports of garments, and that, they placed orders with the accused for supply of garments, towards which a sum of Rs.3,50,000/- was paid by the Complainant to the Accused on 2.2.2012. Since the accused was not able to supply the garments, the Complainant demanded for return of the money.

3. The accused gave a cheque for Rs.3,50,000/-, which when presented, was dishonoured for 'insufficiency of funds'. After issuing statutory notice, the Complainant launched the prosecution against the Accused in STC No.828 of 2012 before the Judicial Magistrate No.I, Coimbatore, under Section 138 of Negotiable Instruments Act, challenging which, the second and fourth accused are before this Court.

4. The learned counsel appearing for the accused submitted that the first accused in the complaint is a Private Limited Company and the petitioners are second and fourth accused. It is the case of the accused that the complaint does not speak about the actual involvement of the petitioners/accused in the issuance of the impugned cheque for fastening vicarious criminal liability under Section 141 of the Negotiable Instruments Act. In support of this contention, learned counsel relied upon the decision in S.M.S.Pharmaceuticals Ltd., v. Neeta Bhalla (2005 (5) CTC 65 (SC)). The learned counsel for the accused further submitted that the complaint has been filed with the aid of a power of attorney, and that, the complaint did not disclose that the power of attorney is personally aware of the facts and circumstances of the case. In support of this contention, learned counsel for the accused relied upon the judgment of the Supreme Court in A.C.Narayanan v. State of Maharashtra, (2014 (1) LW 698 (SC)).

5. The learned counsel appearing for the Complainant submitted that in para 2 of the complaint it is stated that "accused No.2 to 4 are officially in charge of the day to day affairs of the accused No.1 Company", and that, this averment will be sufficient for the prosecution to proceed against the petitioners/accused.

6. This Court carefully considered the rival submissions advanced by the respective learned counsel for the parties, and carefully gone through the impugned complaint.

7. It is seen that the first accused in the complaint is V.G.S.Design House Pvt. Ltd., and the impugned cheque has been drawn on the account of the first accused, signed by Suresh Pandari Nathan

(first petitioner/A2). In K.K.Ahuja v. V.K.Vohra (2009 (5) CTC 81 (SC)), the Honourable Supreme Court has held that the signatory of the cheque and the Managing Director of a Company can be made as accused by virtue of the office held by him. Therefore, the prosecution against Suresh Pandari Nathan (A-2), who is the Managing Director of the first accused Company, and who has signed the cheque, cannot be quashed.

8. As regards Suresh Kanthimani Rekha (second petitioner/A4), the Supreme Court in Gunmala Sales Private Limited v. Navkar Promoters Private Limited ((2015) 1 SCC 104) has held that there should be specific averments in the complaint about the involvement of the person in the affairs of the Company, when the impugned cheque was issued. In the present case, such a specific averment for fastening criminal liability on Suresh Kanthimani Rekha (A4) is absent.

9. As regards the second contention relating to power of attorney, it is seen that the complainant is Sree Rajkondal Exports Enterprises, which is a juristic person, and the power of attorney has been given by the said Sree Rajkondal Exports Enterprises to A.Sivasubramaniam, who is said to be the authorised signatory and power agent. Under such circumstances, the second contention of the learned counsel for accused fails.

10. In the result, this petition is partly allowed. The prosecution against Suresh Kanthimani Rekha/second petitioner herein (A4) in STC No.828 of 2012 on the file of Judicial Magistrate No.I, Coimbatore, is hereby quashed. This petition with regard to Suresh Pandari Nathan/first petitioner (A2) is dismissed. Connected miscellaneous petitions are closed.

vr

s/d-
Assistant Registrar(CS-III)

True Copy
सत्यमेव जयते
Sub-Assistant Registrar

To

The Judicial Magistrate I,
Coimbatore.

+ 1 cc to M/s.G.Vijay Anand Associates, Advocate, SR 49402

+ 1 cc to M/s.Sarvabhuman Associates, Advocate, SR 45682

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