

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.06.2015

CORAM

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Crl.O.P.No.3022 of 2010

and

M.P.No.1 of 2010

P.Hema

W/o.M.A.Sankar

Partner M/s.Deivasn Fabrics

33/A, Rajiv Nagar,

Seelanaickenpatti,

Salem - 636 007.

... Petitioner/Accused 5

- Vs -

R.M.Rajeswaran

S/o.Ramanathan

10-N, Rajaji Road,

Vijaya Hospital Backside

Salem - 636 007.

... Respondent/Complainant

Prayer : The Criminal Original Petition has been filed under Section 482 of Cr.P.C praying to call for records and quash the proceedings as against the petitioner in STC.No.576/09 on the file of the Learned Judicial Magistrate No.III, Salem.

For Petitioner : Mrs.Jayasri Baskar

For Respondent : Ms.M.Srividhya

सत्यमेव जयते
ORDER

The 5th accused in STC.No.576 of 2009 on the file of the Judicial Magistrate No.III, Salem, is the petitioner herein. The respondent/complainant filed a complaint as against the five accused stating that the first accused is the Firm and the accused 2 to 5 are the partners of the first accused Firm and the accused 2 to 5 are actively participating in the day to day affairs of the first accused Firm.

2. It is further stated by the learned counsel for the petitioner that the petitioner is the 5th accused and in the complaint, it has been stated that the accused 2 to 5 are actively participating in the day to day affairs of the first accused Firm and no allegation has been made regarding the role played by the petitioner in the business Firm and relied upon 2015 Cr1 LJ 285 (SC) in support of his contention and the learned counsel for the petitioner submitted that the petition is liable to be allowed and the complaint as against the petitioner is liable to be quashed.

3. On the other hand, the learned counsel for the respondent/complainant submitted that in paragraph No.4, it has been stated that on 01.05.2007, the accused 2 to 5 jointly borrowed a sum of Rs.2,00,000/- as a hand loan and to discharge the said loan, the accused 2 to 5 as a partners and authorised signatory of the cheques, drawn two cheques.

4. The learned counsel further submitted that in the sworn statement, it has been stated that the accused 2 to 4 for the purpose of promoting their business borrowed money from the complainant and towards discharge of the said amount, A2 and A4 with the knowledge and consent of the other partners, issued two cheques for a sum of Rs.1,00,000/- each and therefore, it is submitted that necessary allegations were made in the complaint regarding the role played by the accused in the Firm and merely because, the accused was not signatory to the cheques, it cannot be presumed that the accused was not responsible. I am unable to accept the contention of the petitioner.

5. In the judgment reported in Sabitha Ramamurthy and Anr. V. R.B.S.Channbasavaradhya (2006) 10 SCC 581, it was held by the Hon'ble Supreme Court in paragraph 21

" that it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the Court to arrive at a prima facie opinion that the accused is vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a persons although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite

statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. By verbatim reproducing the wording of the Section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person Under Section 141 of the N.I.Act."

6. In the judgment reported in 2015 CRL.L.J. 285, (Gunmala Sales Private Ltd., V. Anu Mehta & Ors), the Hon'ble Supreme Court summarize the conclusions as follows:

"33. a) Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director;

b) If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director:

c) In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about role of the Director in the complaint. It may do so having come across some unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of the process of the court. Despite the presence of basic averment, it may come to a conclusion

that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, uncontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed;

d) No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the Court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but, nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.

Therefore, on reading of Clause - a, referred to above it is clear that the basic averment is to be made that the Director was in charge of and responsible for the conduct of the business of the company, and the Court can issue process and clause - c deals with the exception. In this case, as rightly pointed out by the learned counsel for the respondent in paragraph 4 of the complaint, it has been stated that the accused 2 to 5 jointly borrowed a sum of Rs.2,00,000/- and towards discharge of the said loan, the accused 2 to 5 as a partners and authorised signatories issued the cheques. In the sworn statement, it has been stated that all the accused

borrowed a sum of Rs.2,00,000/- and the accused 2 and 4 with the consent and knowledge of the accused 3 and 5, issued the impugned cheques. Hence, necessary allegations are made and therefore, it cannot be said that no case was made out against the petitioner. It is for the complainant to prove the role played by the petitioner for the purpose of Firm and it is open to the petitioner to disprove the fact that she was not having active role for the purpose of Firm. According to me, necessary allegations are made in the complaint to make the petition liable to be set aside and hence, the petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

sms

To

1.The Judicial Magistrate No.III,
Salem.

2.-do- Through The Chief Judicial Magistrate,
Salem.

+1cc to Mr.K.V.Sridharan, Advocate, S.R.No.27507

+1cc to Mr.R.Singgaravelan, Advocate, S.R.No.27275

Cr1.O.P.No.3022 of 2010
and
M.P.No.1 of 2010

SCD(CO)
CA(01/07/2015)

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