

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

Crl.O.P.Nos.20972, 20973 of 2009

and

Crl.O.P.No.19811 of 2010

and

M.P.Nos.1 of 2009 (3 in nos)

1. M.Muthukumaran
2. S.Nithya Urvasi

...Petitioners 1 and 2
in all Crl.O.Ps.
(Accused 4 & 5)

vs.

M/s.Atlas Logistics Pvt. Ltd.,
rep. by its Power Agent Mr.K.Suresh
No.351/1, Sripathy Nagar,
Nanjundapuram Road,
Ramanathapuram,
Coimbatore - 641 045.

...Respondent in all
Crl.O.Ps. (Complainant)

Prayer in all Crl.O.Ps. Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code to call for records relating to cases in C.C.Nos.191, 217 and 549 of 2009, respectively on the file of the Judicial Magistrate No.VI, Coimbatore, and to quash the same.

For Petitioners : Mr.A.D.Jagadish Chandira

For Respondent : No appearance

COMMON O R D E R

The petitioners are A4 and A5 in C.C.Nos.191, 217 and 549 of 2009, on the file of the Judicial Magistrate No.VI, Coimbatore.

2. The respondent/complainant filed the abovesaid cases against the petitioners and others, for offence under Section 138 of Negotiable Instruments Act, stating that the petitioners and other accused are Directors of the Company, named "M/s.Atlas Logistics Pvt. Ltd", and towards the due payable by the said Company, three cheques were issued for different amounts for and behalf of the Company, signed by Managing Director and another Director, by name G.Kandasamy, and when those cheques were presented for encashment,

they were dishonoured. Hence, the respondent/complainant, after issuing statutory notice, filed the abovesaid complaints against the petitioners and others, and the present Petitions are filed to quash those complaints insofar as the petitioners herein are concerned.

3. It is submitted by Mr.A.D.Jagadish Chandira, the learned counsel appearing for petitioners that the petitioners are not Directors of the abovementioned Company, and to substantiate the same, they filed Search Report regarding the Company made by Auditors and submitted that, as per Annexure II, details of shareholders are mentioned, wherein, the petitioners are shown as shareholders, and as per Annexure-I, T.M.Suruliram is mentioned as Managing Director, G.Kandasamy is mentioned as Whole Time Director and K.Subramaniam is mentioned as Director, and the said K.Subramaniam ceased to be Director from 16.11.2006, and Annexures I and II were authenticated by Auditors on 02.09.2009. The learned counsel, therefore, submitted that the petitioners are not the Directors of the Company at the relevant point of time when cheques were issued. Admittedly, cheques were signed by Whole Time Director-G.Kandasamy and Managing Director-T.M.Suruliram, and when the petitioners are not Directors, they cannot be vicariously held liable for the offence with which they are charged.

4. The learned counsel appearing for petitioners further submitted that the respondent/complainant proceeded on the basis that the petitioners are Directors of the Company, and filed cases against them. In the complaints also, no specific allegations have been made against the petitioners and the role played by them on behalf of the Company and relied upon the judgment reported in (2015) 1 L.W. CrI.614 in re (Pooja Ravinder Devidasani Vs. State of Maharashtra and another) in support of his contention.

5. On a perusal of Court records pertaining to CrI.O.P.No.20972 of 2009, it is seen that all these cases were taken up together, and there was no representation for the respondent/complainant on 28.08.2013, 09.10.2013 and 10.10.2013. Even yesterday, i.e., 01.06.2015, when the petitions were called, there was no representation for the respondent and today also, there is no representation on their behalf. Though it is seen from the causelist that in CrI.O.P.No.19811 of 2010, notice was not served on the respondent, having regard to the fact that the same respondent is appearing through counsel in other Petitions, viz., in CrI.O.P.Nos.20972 and 20973 of 2009, and when those Petitions were taken together on earlier occasions, there was no representation for the respondent, this Court is of the firm view that the respondent has been served properly, but, he has not evinced interest in contesting the cases.

6. It is seen from the Search Report regarding the respondent/Company filed by the Chartered Accountant that, as per the Annexure I, they are only three Directors, viz., T.M.Suruliram-Managing Director, G.Kandasamy/Whole Time Director, and K.Subramaniam/Director. In the list of Directors in Annexure I, the petitioners names were not found, and in the Annexure II, the petitioners names were mentioned as shareholders. Therefore, it is prima facie seen from the Search Report that the petitioners are not the Directors of the Company. Thus, when the petitioners are not Directors of the Company, they cannot be held responsible for the act of the Company.

7. Further, in the complaints, it is only stated that the Directors are in charge and responsible for the conduct of the Company, and therefore, they are guilty of offence. It is submitted by the learned counsel for the petitioners that the petitioners sent reply notice to the statutory notices sent by the respondent/complainant, wherein, the petitioners have specifically stated that they were not Directors of the Company at any point of time and they were not at all connected with the affairs of the Company and the fact of petitioners' reply to the statutory notice was not mentioned in the complaints.

8. In the judgment reported in (2015) 1 L.W. CrI. (614) Pooja Ravinder Devidasani Vs. State of Maharashtra and another), referred supra, it is held in para No.27 that, "it is settled law that to attract a case under Section 141 of the N.I. Act a specific role must have been played by a Director of the Company for fastening vicarious liability. But in this case, the appellant was neither a Director of the accused Company nor in charge of the Company at the time of commission of the alleged offence. There is not even a whisper or shred of evidence on record to show that there is any act committed by the appellant from which a reasonable inference can be drawn that the appellant could be vicariously held liable for the offence with which she is charged".

9. In this case also, except, bald allegation that the petitioners are Directors of the Company, there is no necessary averments made in the complaints to the effect that the petitioners were responsible for the affairs of the Company. Further, having regard to the fact that the petitioners are not Directors of the Company, they cannot be held responsible for the act of the Company.

10. Hence, these Criminal Original Petitions are allowed and the complaints in C.C.Nos.191, 217 and 549 of 2009, respectively on the file of the Judicial Magistrate No.VI, Coimbatore, are quashed insofar as the petitioners herein are concerned. Consequently, connected M.Ps. are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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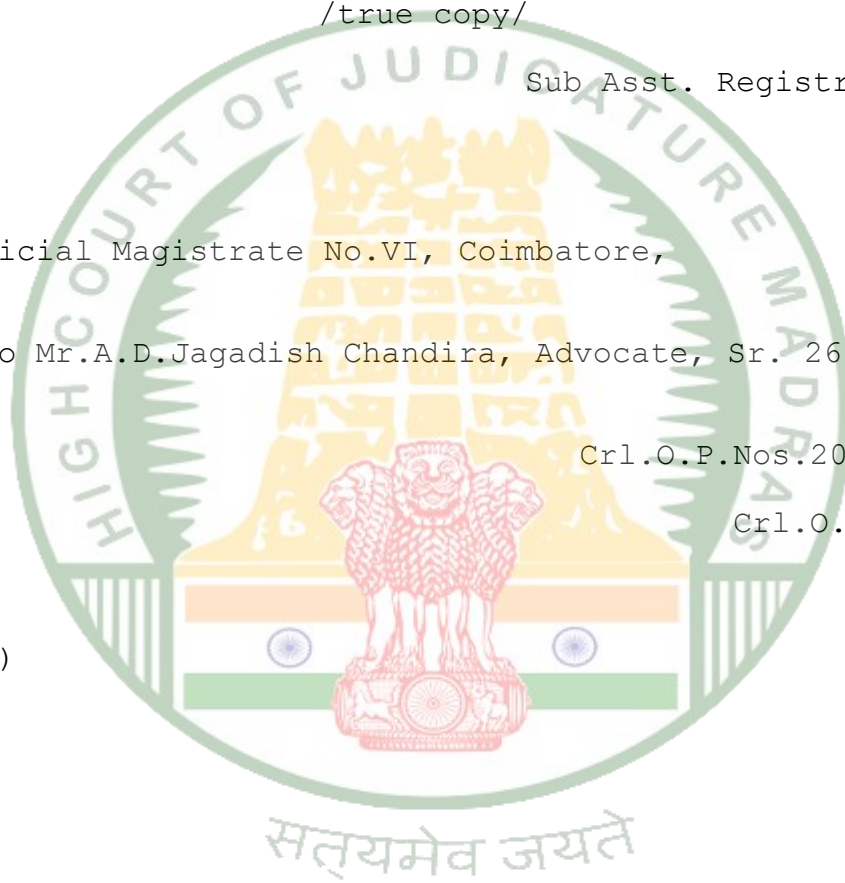
To

The Judicial Magistrate No.VI, Coimbatore,

3 ccs to Mr.A.D.Jagadish Chandira, Advocate, Sr. 26065, 26064, 26066

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and
Crl.O.P.No.19811 of 2010

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