IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2015

CORAM

THE HON'BLE MR. JUSTICE R.S.RAMANATHAN

CRL.O.P.NOS.24272 AND 24279 OF 2014
M.P.NOS.1 AND 1 OF 2015
AND
M.P.NOS.1 AND 1 OF 2015

Sharmila ... Petitioner in both Crl.OPs

Vs.

M/s.Rich Source International,
Rep. by its Proprietrix
Irene Manohar ... Respondent in Crl.OP.24272 of 2014

Irene Manohar ... Respondent in Crl.OP.24279 of 2014

Prayer in Crl.OP.24272 of 2014:

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for the records in C.C.No.3959/2014 on the file of the Metropolitan Magistrate, Fast Track Court No.2, Magistrate Level, Egmore and to quash the same as against the petitioner.

Prayer in Crl.OP.24279 of 2014:

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for the records in C.C.No.3958/2014 on the file of the Metropolitan Magistrate, Fast Track Court No.2, Magistrate Level, Egmore, and to quash the same as against the petitioner.

For Petitioner: Mr.M.Jaikumar

For Respondents: Mrs.Nalini Chidambaram, Senior Counsel for Mrs.C.Uma

C O M M O N O R D E R

These Criminal Original Petitions have been filed, seeking to quash the proceedings in C.C.Nos.3958 and 3959 of 2014, respectively, on the file of the learned Metropolitan Magistrate, Fast Track Court No.2, Magistrate Level, Egmore, insofar as the petitioner is concerned, who has been arrayed as accused No.3 therein.

2. The respondents herein filed the abovesaid cases/complaints against the petitioner and two others under Section 138 of Negotiable Instruments Act, 1881, and the present Petitions are filed by the petitioner to quash the said cases on the ground that the petitioner is only one of Directors of the first accused/Company, and she is not in charge of conduct of the business of the first accused/Company, and in the absence of any material produced by the respondents that the petitioner was in charge and responsible for conduct of the first accused/Company, she cannot be vicariously made liable for the acts of the accused Nos.1 and 2.

3. Mr.M.Jaikumar, the learned counsel appearing for the petitioner submitted that a reading of the complaints would also disclose that the second accused, viz., the husband of the petitioner, issued a letter of undertaking, dated 17.12.2012, and requested the complainants/respondents to give him a hand loan in his individual capacity. The respondents/complainants also accepted the request of the second accused, and as per letter of undertaking, the second accused, who is the Managing Director of the first accused/Company, agreed to repay the loan with interest within a specific period, and towards the discharge of that loan, cheques were issued by him on behalf of the first accused/Company. Therefore, it has been made clear by the complainants itself, that the loan was payable by the second accused in his individual capacity, and in respect of the said loan, cheques were issued, and therefore, the petitioner, who is the third accused, cannot be made vicariously liable for dishonour of cheques. In support of his contentions, the learned counsel placed reliance on the judgments reported in i) [2009] 10 SUPREME COURT CASES 48 in re (K.K.Ahuja Vs. V.K.Vora and another) and ii) [2010] 3 SUPREME COURT CASES 330 in re (National Small Industries Corporation Ltd., Vs. Harmeet Singh Paintal and another).

4. Per contra, Mrs.Nalini Chidambaram, the learned Senior Counsel for respondents submitted that the petitioner is one of the Directors of the first accused/Company, and she is also the wife of the second accused, and in the undertaking given by the second accused, she signed as a witness, therefore, she was fully aware of the transaction that took place between the respondents and the first accused/Company. The learned Senior Counsel further submitted that

statutory notices were issued to the petitioner, to which, she has replied that she has nothing to do with the transaction, and therefore, she was not liable.

5. The learned Senior Counsel for the respondents, therefore, submitted that, having regard to the specific allegation made in the complaints that the petitioner was in charge of conduct of the business of the first accused/Company when the cheques were issued, and the fact that the petitioner is also one of the Directors of the Company, prima facie case has been made out by the respondents, and hence, summons were issued, therefore, the proceedings initiated against the petitioner cannot be quashed.

6. Heard Mr.M.Jaikumar, the learned counsel appearing for the petitioner and Mrs.Nalini Chidambaram, the learned senior counsel for the respondents.

7. It is seen from complaints that a letter of undertaking was executed by the second accused, agreeing to repay the loan with interest if advanced by the respondents/complainants, and thereafter, cheques were issued by the second accused on behalf of the first accused/Company and the petitioner signed the letter of undertaking as a witness. Therefore, the petitioner is aware of the transaction that took place between her husband/second accused and the respondents/complainants. The petitioner, being a Director of the first accused/Company did not prevent her husband/second accused from issuing the cheques towards his personal liability, and as per the complaints, cheques were issued on behalf of the first accused/Company signed by the second accused, who is its Managing Director.

8. Therefore, the petitioner, who is the wife of the second accused, having witnessed the letter of undertaking, which was signed in his individual capacity, and having allowed her husband to issue cheques on behalf of the first accused/Company, that would per se prove that she has taken active part in the business activities of the Company. Further, in paragraph No.21 of the complaint filed by the respondent in Crl.O.P..No.24279 of 2014 and in Paragraph No.22 of the complaint filed by the respondent in Crl.O.P.No.24272 of 2014, it has been stated that the second and third accused were Managing Directors of the first accused/Company and they were in charge of conduct of the business of the first accused/Company when the cheques were issued by the first accused/Company. Therefore, necessary allegations were made against the petitioner.

9. In this context, it is pertinent to refer to the judgment relied upon by the learned counsel for the petitioner, viz., the judgment rendered in K.K.Ahuja's, wherein, the Hon'ble Supreme Court, after referring to the decision rendered in re in (S.M.S.

Pharmaceuticals Ltd. Vs Neeta Bhalla), reported in [2007] 4 SCC 70, held as follows:

> " Para No. 9....
>
> What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and responsible to the Company for the conduct of the business of the Company. Every person connected with the Company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business of the Company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a Director of a Company who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for the conduct of business of the Company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a Company. Conversely, a person not holding any office or designation in a Company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a Company at the relevant time. Liability depends on the role one plays in the affairs of a Company and not on designation or status. If being a Director or manager or secretary was enough to cast criminal liability, the section would have said so. Instead of 'every person' the section would have said 'every Director, manager of secretary in a Company is liable'..., etc. The legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action.
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> 18. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the Company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act

contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141, he would issue the process. We have seen that merely being described as a Director in a Company is not sufficient to satisfy the requirement of Section 141. Even a non-Director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial."

10. In the very same judgment, (viz., the judgment rendered in K.K.Ahuja's (supra), the Hon'ble Supreme Court further held as follows:-

" Para No.24. Therefore, the averment in a complaint that an accused is a Director and that he is in charge of and is responsible to the Company for the conduct of the business of the Company, duly affirmed in the sworn statement, may be sufficient for the purpose of issuing summons to him. But if the accused is not one of the persons who falls under the category of "persons who are responsible to the Company for the conduct of the business of the Company" [listed in para 21 above], then merely by stating that "he was in charge of the business of the Company" or by stating that "he was in charge of the day-to-day management of the Company" or by stating that "he was in charge of, and was responsible to the Company for the conduct of the business of the Company", he cannot be made vicariously liable under Section 141[1] of the Act."

11. Reverting to the facts of the case on hand, as stated supra, in the complaints, more specifically in paragraph Nos.21 and 22 of the complaints filed by the respondents respectively, necessary averments are made to make the petitioner vicariously liable for the act of the second accused.

12. In the judgment rendered in National Small Industries Corporation Ltd., Vs. Harmeet Singh Paintal and another, (supra) the Hon'ble Supreme Court reiterated the very same principle, as laid down in the judgment rendered in K.K.Ahuja's (supra) and held that, in case of a Director, complaint should specifically spell out, how, and in what manner, the Director was in charge of, or was responsible to the accused Company, for conduct of its business and it is further

held that mere bald statement that he was in charge of, and was responsible for conduct of business of the Company, was not sufficient.

13. In this case, as stated supra, the petitioner is the wife of the second accused, and she was witness to the letter of undertaking given by the second accused, and also allowed the cheques to be issued on behalf of the first accused/Company. Therefore, when necessary averments are made in the complaints, the contentions putforth by the learned counsel for the petitioner that the petitioner cannot be made vicariously liable for the act committed by accused Nos.1 and 2, are untenable.

14. In the result, the both Criminal Original Petitions are dismissed. Consequent to the orders passed in these Criminal Original Petitions, the Petitions filed for vacating the stay, viz., M.P.Nos2. and 2 of 2015, are allowed and M.P.Nos.1 and 1 of 2014, viz., the Petitions for stay are dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sd/gya

To
The Metropolitan Magistrate,
Fast Track Court No.2,
Magistrate Level, Egmore.

+ 2 cc to Mrs.C.Uma, Advocate Sr.16460 & 16414
+ 2 ccs to Mr.M.Jaikumar, Advocate SR.16437, 16454

Crl.OP.Nos.24272 and
24279 of 2014

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