

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2015

CORAM

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

Crl.O.P.No.10950 of 2010

&

M.P.Nos.1 and 2 of 2010

1. Mr. Uma Srinivasan

2. Mrs. R. Malliga

...Petitioners/Accused 4 & 5

vs.

M/s. Lokeshvaran Engineering,
represented by its Owner
Mr. D. Sankar

...Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for the records and quash the complaint against the petitioner in C.C.No.1585 of 2009 pending on the file of the learned XIII Metropolitan Magistrate Court, Egmore, Chennai.

For Petitioners : Mr.A.Thirumaran

ORDER

The petitioners are accused No.4 and 5 in C.C.No.1585 of 2009 on the file of XIII Metropolitan Magistrate Court, Egmore, Chennai, and this Petition is filed to quash the said case insofar as they are concerned.

2. It is submitted by the learned counsel for the petitioners that the petitioners are the parents of accused No.2, and they were not partners of the first accused-Firm, and therefore, they cannot be

made liable for the cheque issued by the first accused-Firm, represented by its Partners/accused Nos.2 and 3. The learned counsel also submitted that no allegations have been made in the complaint about the role played by the petitioners, and only allegations made against them is that they were in charge of the business affairs of the first accused-Firm, and relied upon the judgment reported in C.D.J. (2010) S.C. 153 in the matter of (National Small Industries Corp. Ltd., Vs. Harmeet Singh Paintal and another) in support of his contention. Hence, the learned counsel submitted that the complaint against the petitioners is liable to be quashed.

3. I am unable to accept the contentions of the learned counsel for the petitioners.

4. It is seen from the copy of the complaint that, it was filed against five accused. First accused is the Partnership Firm, and accused Nos 2 to 5 are its Partners. It is the specific case of the petitioners, who are arrayed as accused Nos.4 and 5 that they are not Partners of the first accused-Firm, and they are parents of accused No.2. Unfortunately, no materials have been placed by the learned counsel for the petitioners to substantiate his case that the petitioners are not Partners of the first accused-Firm. The other contention of the learned counsel for the petitioners is that, except the bald allegation that the petitioners were in charge of the business affairs of the first accused-Firm, no specific allegation has been made regarding the role played by the petitioners in the conduct of the business of the first accused-Firm, and in the absence of such specific allegation, the Trial Court ought not to have taken cognizance of the case against the petitioners.

5. In the judgement of the Hon'ble Supreme Court in National Small Industries Corporation's case, referred to above, it is held as follows:-

" i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction. ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of commission of offence, were in charge of and were responsible for the conduct of the business of the company. iii) Vicarious liability

can be inferred against a company registered or incorporated under the Companies Act, 1956, only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make accused therein vicariously liable for offence committed by company along with averments in the petition containing that accused were in charge of and responsible for the business of the company and by virtue of their position they are liable to be proceed with. iv) vicarious liability on the part of a person must be pleaded and proved and not inferred. v) If accused is Managing Director or Joint Managing Director, then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with. vi) If accused is a Director or an Officer of a company, who signed the cheques on behalf of the company, then also it is not necessary to make specific averment in complaint. vii) The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time."

6. In this case, in para No.5 of the complaint, it has been stated that, during the first week of June, 2007, on behalf of the first accused-Firm, accused Nos.2 to 5 approached the complainant, and asked for supply of men power to carryout certain jobs in Saint Gobain Company at Mambakkam, Sriperumbutthur Taluk, Kancheepuram District. In para No.9, it has been stated that, when the cheque was dishonoured, the complainant contacted all the accused with regard to the dishonour of the cheque and all the accused instructed the complainant to present the said cheque once again in the complainant's bank after Pongal. Therefore, materials were furnished in the complaint about the role played by the petitioners in the business of the first accused-Firm, and it is for the petitioners to disprove the same during trial, and at this stage, this Court cannot go into the aspects that the petitioners were not Partners of the first accused-Firm or there were not in the management of the first accused-Firm.

7. Hence, the Criminal Original Petition is dismissed. However, liberty is given to the petitioners to substantiate their case that there were not Partners of the first accused/Firm or there were not in the managing affairs of the Firm, during trial. The Trial Court is directed to dispose of the case in C.C.No.1585 of

2009 within a period of four months from the date of receipt of a copy of this order. Consequently, connected M.Ps are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

sd

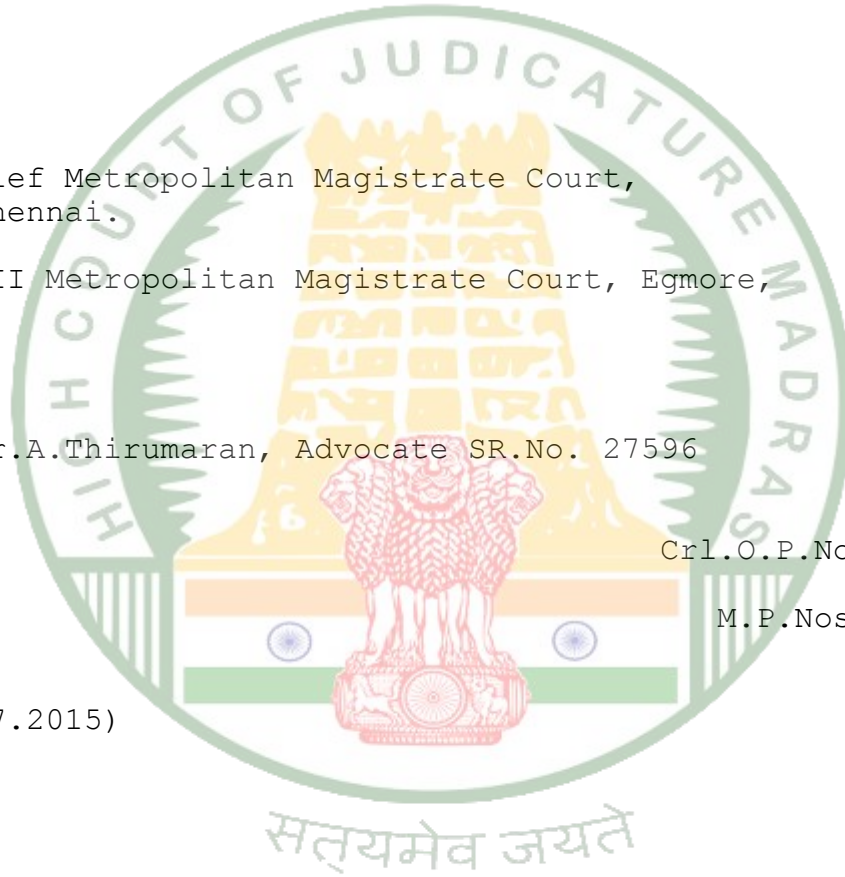
To

1. The Chief Metropolitan Magistrate Court,
Egmore, Chennai.
2. The XIII Metropolitan Magistrate Court, Egmore,
Chennai.

1 CC to Mr.A.Thirumaran, Advocate SR.No. 27596

CrI.O.P.No.10950 of 2010
&
M.P.Nos.1 and 2 of 2010

CTK (CO)
PSI (14.07.2015)



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