

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Crl.O.P. No.1532 of 2009
and
M.P.No.1 of 2009

1.K.Mahendran
2.K.Kandasamy

... Petitioners

vs.

P.Muthuraja

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records in C.C.No.4287 of 2008 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai and quash the proceedings as against the petitioner herein.

For Petitioners : Mr. V.Rajamohan
For Respondent : No appearance

O R D E R

The petitioners are A.3 and A.4 in C.C.No.4287 of 2008 on the file of the VII Metropolitan Magistrate, George Town, Chennai.

2. The respondent filed the above private complaint under Section 138 of the Negotiable Instruments Act against the accused and the first accused is M/s. Fine Weaves, a partnership firm represented by a partners and Accused 2 to 5 are the partners of the said firm. It is the case of the complainant/the respondent herein that Accused 2 to 5 were the partners of the first accused firm and the first accused firm borrowed a sum of Rs.1,00,000/- on 4.1.2008 and the second accused in the capacity of a partner issued a post dated cheque bearing No.782841, drawn on Canara Bank, Virudhunagar Branch, dated 8.4.2008 for a sum of Rs.1,00,000/- and the cheque was dishonoured when presented for collection and thereafter, notice was issued to the partners and they failed to pay the amount and hence, the prosecution was launched.

3. It is submitted by the learned counsel for the petitioner that the petitioners are A.3 and A4 and there is no allegation in the complaint or in the sworn statement or in the notice issued by the

complainant/respondent herein that the petitioners were responsible for the conduct of the business of the partnership firm and therefore, having regard to section 141 of the Negotiable Instruments Act, in the absence of any allegation made in the complaint, it cannot be presumed about the involvement of the accused in the partnership firm in the conduct of business. Partners cannot be arrayed as accused when admittedly cheque was issued by the second respondent. He also relied upon the judgment of this Court rendered in Crl.O.P.No.2396 of 2011 dated 26.6.2012 in the matter of Mrs.Mumtaj Begum Vs. Perenial Health Care India Pvt.Ltd.,.

4. The respondent/defacto complainant was served with notice and his name is also printed in the cause list and there is no appearance for the respondent. Hence, the respondent is set exparte.

5. It is seen from the judgment referred to above, the learned Judge relied upon the judgment of the Hon'ble Supreme Court reported in (2010) 3 SCC 330 in the matter of National Small Industries Corporation Ltd v. Harmeet Singh Paintal and another wherein the Hon'ble Supreme Court in Paragraph 38 held as follows:-

"38. 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" 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. To put it clear that for making a person liable under Section 141(2), the mechanical repetition of the requirements under Section 141 (1) will be of no assistance, but there should be necessary averments in the complaint as to how and in what manner the accused was guilty of consent and connivance or negligence and therefore, responsible under sub-section (2) of Section 141 of the Act."

6. As rightly submitted by the learned counsel for the petitioners, in this case also, there is no allegation regarding the involvement of the petitioner in the conduct of the business and as a matter of fact, in the statutory notice as well as in the sworn statement, nothing has been stated about the role played by the petitioners and it is only stated that the petitioners are partners. As there is no substantial compliance of Section 141 of the N.I.Act to launch the prosecution against the petitioner, the impugned proceedings is liable to be quashed as against the petitioner.

7. Hence, the petition is allowed and the proceedings in C.C.No.4287 of 2008 on the file of the learned VII Metropolitan Magistrate, George Town, Chennai, is quashed as against the petitioner. The connected Miscellaneous Petition is closed.

asvm

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

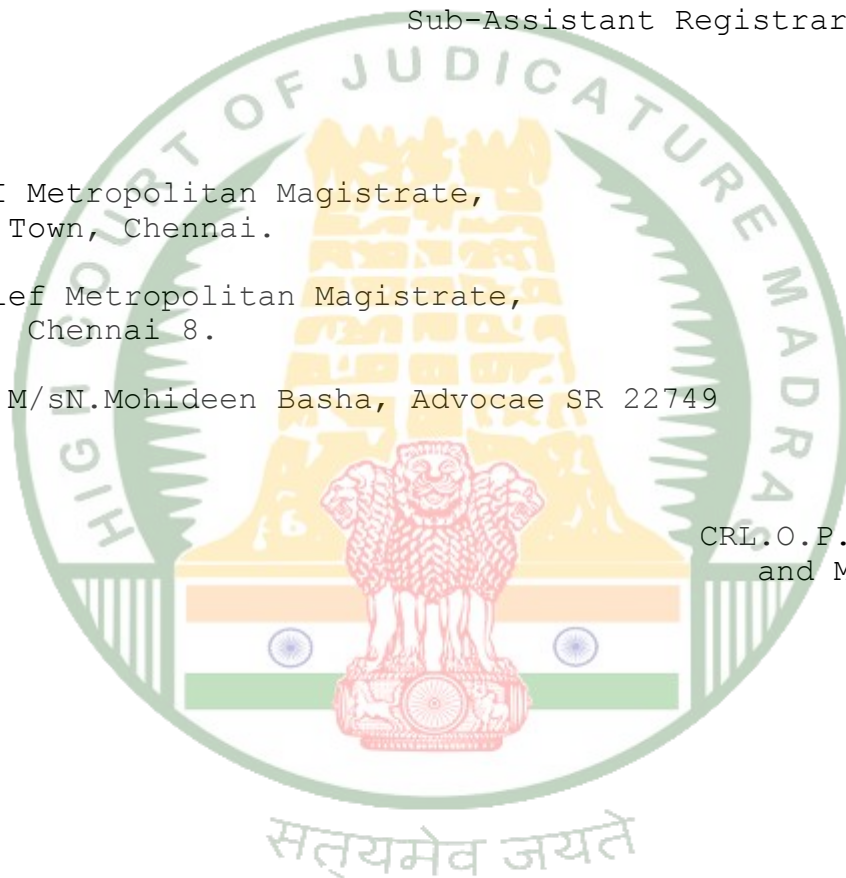
To

1. The VII Metropolitan Magistrate,
George Town, Chennai.
2. The Chief Metropolitan Magistrate,
Egmore, Chennai 8.

+ 1 cc to M/sN.Mohideen Basha, Advocae SR 22749

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