

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2015

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

Crl.O.P.No.19084 of 2010
and
M.P.Nos.1 and 2 of 2010

1. M/s. Maya Hotels Pvt. Ltd.,
A Private Ltd. Company
rep. by its Director.
2. Mrs.Thirtha Kumaraswamy
Director of M/s. Maya Hotels Pvt. Ltd.,
3. Mr.M.C.Kumaraswamy
Director of M/s. Maya Hotels Pvt. Ltd.,Petitioners
vs.

Bharath Kinger
Proprietor,
M/s.R.K.Investments
No.18 A, Rajaji Road,
Salem 636 007.Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for records relating to the case in C.C.No.501 of 2009, on the file of the Judicial Magistrate Court No.III, Salem, and to quash the same.

For Petitioners: Mr.R.Sankarasubbu for
Mr.C.D.Sugumar

For Respondent : Ms.Zeenath Begum
for Mr.T.Murugamanickam

O R D E R

The accused in C.C.No.501 of 2009, on the file of Judicial Magistrate Court No.III, Salem, are the petitioner herein.

2. The respondent/complainant filed the aforesaid case against the petitioners for offence under Section 138 of Negotiable Instruments Act, 1881, and this Petition is filed to quash the same.

3. The learned counsel appearing for petitioners has submitted that the first petitioner is the Company, petitioners 2 and 3 are its Directors, and in the complaint, no specific allegation has been made against the Directors/petitioners 2 and 3/accused Nos.2 and 3 about the role played by them, and it is only stated that they are Directors and they are in charge of the affairs of the first accused/Company. The learned counsel also relied upon the judgment reported in (2015) 1 L.W. Cr1.614 in re (Pooja Ravinder Devidasani Vs. State of Maharashtra and another) in support of his contention, wherein, the Hon'ble Supreme Court held that to make the Director of the Company liable, there must be specific allegation about the role played by the Director, and in the absence of any specific overtact attributed to the Director, the Director cannot be made liable on the ground that he was the Director of the Company and he is vicariously liable for the act of the Company. The learned counsel for the petitioner further submitted that, admittedly, the cheque was issued on behalf of the first accused/Company by the second petitioner, and the third petitioner has no role in the issuance of the cheque. Hence, the complaint against the third petitioner is liable to be quashed.

4. The learned counsel appearing for the respondent submitted that the second petitioner is the wife of the third petitioner, and she is the Director of the first accused/Company, and both the petitioners 2 and 3 were in charge of the management of the business, and the third petitioner, being the husband of the second petitioner, cannot feign ignorance about the transaction. The learned counsel also submitted that, in para No.2 of the complaint, it is stated that the petitioners 2 and 3 are in charge of the affairs of the first accused/Company. The learned counsel, therefore, submitted that necessary allegations are made to prosecute all the accused.

5. I am unable to accept the contentions of the learned counsel appearing for the respondent. Admittedly, liability was payable by the first accused/Company, and the second accused/second petitioner is the Director of the Company, and she issued the cheque on behalf of the first accused/Company. Except, the bald allegation in para No.2 of the complaint that accused Nos.2 and 3 were in charge of affairs of the first accused/Company, no specific overtact has been attributed to the third petitioner, or the role played by him in the management of the first accused/Company.

6. In the judgment rendered in Pooja Ravinder Devidasani's case, referred to above, it has been specifically held by the Hon'ble Supreme Court that, when no details have been stated in the complaint about the role played by the Director of the Company in the management of the affairs of the Company, the Director cannot be made liable on the ground that he is the Director of the Company. In this case also, no specific allegation has been made against the

third petitioner, and hence, the complaint against the third petitioner is liable to be quashed. Insofar as the first and second petitioners are concerned, the first petitioner is the Company and the second petitioner has signed the cheque on behalf of the Company, and therefore, I am not inclined to quash the complaint against first and second petitioners.

7. In the result, the Criminal Original Petition is partly allowed and the complaint in C.C.No.501 of 2009, on the file of the Judicial Magistrate No.III, Salem, is quashed in respect of third petitioner alone. The learned Judicial Magistrate No.III, Salem, is directed to dispose of the case in C.C.No.501 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

True Copy

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.III, Salem.

2.-do- Thro The Chief Judl.Magistrate, Salem.

1 cc to Mr.T.Murugamanickam , Advocate Sr.No.28350

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