

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

Cr1.O.P.No.7493 of 2014

and

M.P.No.1 of 2014

1.S.Arun
S/o.Mr.S.A.Kumar

2.Mrs.K.Jayanthi
W/o.Mr.S.A.Kumar ...Petitioners/Accused 3 & 4

-V.-

Kotak Mahindra Bank Ltd
Represented by its Chief Manager
Mr.S.Rangarajan, S/o.Mr.A.Srinivasan
Recovery, Agri Business Group
12, Bharathi Street
Swarnapuri
Salem - 636 004. ...Respondent/Complainant

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to quash the complaint in C.C.No.18/2014 pending on the file of the Judicial Magistrate V, Salem preferred by the respondent/complainant for an offence under Section 138 of the Negotiable Instruments Act, 1881 as against the petitioners.

For Petitioner : Mr.A.Ramesh, Senior Counsel
for Ms.S.Chitra

For Respondents: Mr.E.Omprakash
for M/s.Ramalingam Associates

O R D E R

Heard the learned Senior Counsel appearing for the petitioners and the learned counsel appearing for the respondent.

2. The petitioners who are arrayed as A3 and A4 in C.C.No.18/2014 on the file of the Judicial Magistrate V, Salem has come forward with the present application to quash the proceedings under Section 138 of the Negotiable Instruments Act, 1881 stating that A1 is a partnership firm

and A2 is the partner in-charge of the entire business activities. The accused, A3 and A4 are none other than the son and wife of A2 and they neither take part in the day to day business activities nor they were the signatories of the Cheque.

3. The learned Senior counsel appearing for the petitioners would further submit that in the complaint itself, there is no averment that A3 and A4 is taking active part in the day to day business. Hence, the learned Senior Counsel appearing for the petitioners prayed for quashing the proceedings initiated against the petitioners. To substantiate his contention, the learned Senior counsel relied upon the decision reported in 2013 (16) Supreme Court Cases 630, A.K.Singhania v. Gujarat State Fertilizer Co. & Another.

4. Resisting the same, the learned counsel appearing for the respondent would submit that in paragraph 2 of the the complaint itself, it has been specifically stated "The 1st accused M/s Nandhi Dhall Mills is a firm managed by accused 2 to 4. The accused 2 to 4 are active partners of the 1st accused firm". Further, in paragraph 3 is has been stated "The accused 2 to 4 have borrowed loan Rs.10 crores out of Rs.15 crores sanctioned to them as short term loan". Hence, the learned counsel appearing for the respondent would submit that the petitioners herein are the necessary parties and prayed for dismissal of the petition.

5. Considered the rival submissions made by both sides and perused the typed set of papers.

6. The case of the respondent/complainant is that the first accused M/s.Nandhi Dhall Mills is a partnership firm managed by accused 2 to 4. Admittedly, A2 had taken active part in the borrowal and the Cheque has been signed by A2. In the complaint pleadings itself it was specifically mentioned that the bank has sanctioned Rs.15 crores as short term loan and the accused 2 to 4 have availed Rs.10 crores and executed necessary documents as per the terms and conditions of the banking rules and regulations. To discharge the amount due, A2 had issued a cheque for Rs.2,90,81,000/- and when the same was presented for encashment, it was returned as 'insufficient funds'. Hence, after issuance of the statutory notice, the respondent had preferred the present complaint.

7. The learned Senior Counsel appearing for the petitioners would submit that the date of loan has not been mentioned. Further, he would submit that there is no averment as against A3 and A4, who are the petitioners herein. At this juncture, it would be appropriate to consider the decision relied on by the learned Senior Counsel appearing for the petitioners reported in 2013 (16) Supreme Court Cases 630, A.K.Singhania v. Gujarat State Fertilizer Co. & Another, wherein it was held that even though there was a specific

averment that all the business and financial affairs of the accused Company are decided, organised and administered by Accused 2 to 6, the said averment is not sufficient to fasten the criminal liability on the accused. It would be appropriate to incorporate paragraphs 11.2 and 11.3 of the said decision:

"11.2. In complaint Case No. 1293 of 1996 and all other complaints with which we are concerned in the present appeals the allegation is that "all business and financial affairs of the accused company No.1, are decided, organized, administered by accused Nos. 2 to 6 and in consultation of other directors i.e. from accused Nos. 7 to 13". It has further been averred that at the time the offence was committed "they were in-charge and responsible to the company for the conduct of the business" and, therefore, "they are responsible for day to day affairs and transaction, business and all financial affairs of the accused company."

11.3. Mr.Ranjit Kumar submits that the aforesaid averments are not sufficient and from that it cannot be inferred that accused A.K. Singhania and accused Vikram Prakash have been alleged to be in-charge and responsible for the conduct of the business of the company at the time the offence was committed. He points out that A.K. Singhania is accused No. 8 whereas accused Vikram Prakash is accused No. 10 in these complaints. Mr. Jayant Bhushan, however, joins issue and submits that the substance of the accusation clearly indicates that the two accused were in-charge and responsible for the conduct of the business of the company at the time of the offence."

8. Considering the averments made in paragraphs 2 and 3 of the complaint in the light of the above decision, I am of the considered view that the averments made therein is not sufficient to come to the conclusion that the accused A3 and A4 had taken active part in the day to day business activities of the A1 partnership firm along with A2.

9. Hence, applying the dictum laid down by the Hon'ble Apex Court in 2013 (16) Supreme Court Cases 630, A.K.Singhania v. Gujarat State Fertilizer Co. & Another, this Court is inclined to quash the proceedings initiated against the petitioners herein viz., A3 and A4 in C.C.No.18/2014 pending on the file of the Judicial Magistrate V, Salem, under Section 138 of the Negotiable Instruments Act, 1881.

10. The Criminal original petition is allowed.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate V, Salem.
 2. -do- Through The Chief Judicial Magistrate, Salem.
- + 2 ccs to M/s. Ramalingam, Advocate sr.13936
+ 3 ccs to M/s. S. Chitra Advocate sR.13859

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RSY (CO)
EU 16.03.16



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