

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.19324 of 2015 & M.P.No.1 of 2015

1. M/s.Lakshmi Metal Works
Proprietor K.Rajasekar
68/1-2, Industrial Suburb,
Yeshwantpur, Bangalore,
Karnataka.
 2. K.Rajasekar .. Petitioners
- Vs.
1. State rep. by.
The Inspector of Police
City Crime Branch,
Coimbatore
Crime No.103 of 2012.
 2. N.Srinivas,
Managing Director,
Thirumala Spinners Pvt. Ltd.,
6/1257, A-Avinashi Road,
Peelamedu,
Coimbatore - 641 004. ... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for records in C.C.No.769 of 2014 pending in the files of the learned Judicial Magistrate No.VI of Coimbatore and quash the case against the petitioners/Accused No.3, 4 and allow this Criminal Original Petition.

For Petitioner :Mr.P.V.Selvarajan, Sr. Counsel
for Mr.R.Aranganathan

For Respondents :Mr.C.Emalias
Addl. Public Prosecutor - R1
Mr.D.Raja - R2

O R D E R

The petitioners have come forward for quashing the case in C.C.No.769 of 2014 on the file of the Judicial Magistrate No.VI, Coimbatore for the offences punishable under sections 120(B) and 420 IPC.

2. The learned counsel appearing for the petitioners/A3 and A4 have come forward with this application that the second respondent has given a complaint dated 21.11.2010 against the first and second accused, who are none other than the parents of A4 for the offences punishable under sections 120(B) and 420 IPC and the case has been registered in Crime No.103 of 2012. After investigation, charge sheet has been laid against these petitioners along with A2 on 26.11.2014. A1 was died on 5.1.2013.

3. The learned counsel for the petitioners would submit that on the basis of the complaint, FIR has been registered and in the 161 statement of the defacto complainant, nothing has been stated against this petitioner/A4. Even though he is the son of A1 and A2, he has not taken part in the commission of the offence. Further more, he had further stated that in the complaint itself, the petitioner sought for action against A1 and A2 and against the proprietary concern, Lakshmi Metal Works. The investigation agency has concealed this aspect and laid the charge sheet and hence he prayed for quash of charge against A4. He relied upon the judgement reported in 2007 (5) Supreme Court Cases page 103 - Raghu Lakshminarayanan Vs. Fine Tubes and submitted that the proprietary concern is an individual capacity and the proprietary concern differs from partnership firm, owned by an individual by his position and prayed for quash against the petitioners.

4. Resisting the same, the learned counsel appearing for the defacto complainant/ second respondent submitted that this respondent has lent money to Rajendra Prasad/A1 for his business purpose and A1 and A2, with an intention to cheat this defacto complainant had borrowed money on several occasions. Some amounts have been transferred by RTGS transactions, but he has not repaid the borrowed money. Hence the complaint has been given. Since A1 has died, A4, who is now proprietor of the proprietary concern, Lakshmi Metal works, he is liable to pay the amount. Hence he has been added as an accused. Hence, even during the investigation, the investigating authority has rightly investigated in the right direction and filed charge sheet against A3 and A4 also and prayed for dismissal.

5. The learned Additional Public Prosecutor would submit that since A1 died on 5.1.2013, his son A4, as a legal heir taken over his father's proprietary concern and hence he has been added as an accused.

6. Considering the rival submissions made on either side and on perusal of typed set of papers, the second respondent herein has given a complaint on 21.11.2010 for the offences under sections 120(B) and 420 IPC stating that A1 and A2 with dishonest intention received the amount as loan for his business purpose by giving false representation, failed to repay the amount and when it was demanded, he issued cheques, knowing fully well that he is not having sufficient money in his bank account, thereby, he committed the offences punishable under sections 120(B) and 420 IPC. The first respondent has registered a case in Crime No.103 of 2012 and after investigation, he has filed charge sheet against A1 to A4, since A1 has died on 05.01.2013, his son has been included as A4 and A3 proprietary concern has been cited as an accused.

7. It is well settled law that a criminal culpable offence shall not be inherited by their heirs. Once the accused died, the charge against the accused has been dismissed as abates. So the first respondent in his counter has stated that the Lakshmi Metal Works has been inherited by his son and so they are necessary accused, does not merit acceptance. The investigating agency without knowing the basic thing and without applying its mind had filed the charge sheet against A4, who is only the legal heir of the deceased A1. So the proceedings against A4 is liable to be quashed.

8. In respect of A3 is concerned, A3 is a proprietary concern. A proprietary concern does not have a separate legal entity apart from its proprietor since the proprietary concern and the proprietor are one and the same person. Thus, proprietary concern is not an independent, legal and juristic entity having legal recognition in the eye of law and it can neither initiate proceedings nor proceedings be initiated against it. In the instant case, A1 has borrowed money and a complaint has been preferred against A1 for failing to repay the money. Since A1 died, A3 shall not be impleaded as accused and so, the proceeding against A3 is liable to be quashed. In the decision relied by the learned counsel for the petitioner in 2007 (5) SUPREME COURT CASES 103, it has been stated as follows :

"13. The distinction between partnership firm and a proprietary concern is well known. It is evident from Order 30 Rule 1 and Order 30 Rule 10 of the Code of Civil Procedure. The question came up for consideration also before this Court in Ashok Transport Agency Vs. Awadhesh Kumar wherein this Court stated the law in the following terms (SCC pp. 569-70 para 6)

"6. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Partnership Act, 1932. Though a partnership is not a juristic person but Order 30 Rule 1 CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietary concern, who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 of Order 30 which make applicable the provisions of Order 30 to a proprietary concern enable the proprietor of a proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 of Order 30 have no application to such a suit as by virtue of Order 30 Rule 10, the other provisions of Order 30 are applicable to suit against the proprietor or proprietary business 'in so far as the nature of such case permits.' This means that only those provisions of Order 30 can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case."

15. A Constitution Bench of this Court in S.M.S. Pharmaceuticals Ltd. V. Neeta Bhalla furthermore categorically stated that the complaint petition must contain the requisite averments to bring about a case within the purview of Section 141 of the Act so as to make some persons other than the company vicariously liable therefor."

It is a proprietary concern. On the date of borrowal, it was stated that he borrowed for business purpose. But the cheque has been issued as an individual capacity. In such circumstances, I am of the view that the third petitioner is also not an accused because it is not a juristic person for prosecution.

9. The learned counsel for the petitioner has taken this court to the 161 statement of the defacto complainant in which he has stated that he has not only preferred complaint under section 138 of Negotiable Instruments Act, but also filed O.S.No.6353 of 2013 for recovery of the amount due on the three cheques.

10. Considering the same, I am of the view that the first respondent has committed an error in including A3 and A4 in this case and filed a final report. Hence, this petition is allowed and the charge sheet laid against the A3 and A4 is hereby quashed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police
City Crime Branch,
Coimbatore

2. The Public Prosecutor
High Court, Chennai.

+2cc to M/S.P.Ramesh Babu, Advocate, S.R.No.7341

Cr1.O.P.No.19324 of 2015

ppa(CO)
srg(17/02/2016)

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