

IN THE HIGH COURT OF JUDICATURE AT MADRASDATED : **10.11.2016**

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN**Crl.O.P Nos.5961 and 8124 of 2010
and M.P.Nos.1 and 1 of 2010**

T.Shankar .. Petitioner in Crl.O.P.No.5961 of 2010
JVI. Durairaj .. Petitioner in Crl.O.P.No.8124 of 2010
Vs.

M/s. East West Freight
Carriers Pvt., Limited,
Rep. by its Authorised
Representatives,
R.Thiagarajan,
Regional Office at No.194,
Royapettah, Chennai - 600 014. .. Respondent in both
Crl.O.Ps

Prayer in Crl.O.P.No.5961 of 2010 :- Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the records from the file of the learned XIII Metropolitan Magistrate's Court, Egmore, Chennai and quash the complaint filed by the respondent in C.C.No.128 of 2010 as against the petitioner herein as third accused therein.

Prayer in Crl.O.P.No.8124 of 2010 :- Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the records from the file of the learned XIII Metropolitan Magistrate's Court, Egmore, Chennai and quash the complaint filed by the respondent in C.C.No.128 of 2010 as against the petitioner herein as fourth accused therein.

For Petitioner : Mr.J.Franklin in both the Crl.O.P.
For Respondent : Mr.P.Premkumar in both the Crl.O.P

ORDER

These two Criminal Original Petitions have been filed by A3 and A4 praying to call for the records in C.C.No.128 of 2010 on the file of the XIII Metropolitan Magistrate Court, Egmore and quash the same.

2. It is averred in the petitions that there is no specific allegation or averment or imputation in the complaint as against the petitioners. The petitioners have no art or part in the first accused complaint. They never involved in the day today affairs of the said company. Therefore, the proceedings in C.C.No.128 of 2010 is to be quashed as against the petitioners.

3. The learned counsel appearing for the petitioners contends that the respondent / complainant has to aver and establish that the petitioners were incharge of and responsible for the conduct of the business of the company at the relevant time and in this case, there is no such averments in the complaint and therefore, the complaint as against the petitioners is to be quashed.

4. The learned counsel appearing for the respondent per contra contends that the petitioners were responsible for the day today affairs of the company and therefore, the learned

Metropolitan Magistrate has rightly took the complaint on file as against the petitioners and there is absolutely no abuse of process of law.

5. The petitioners are admittedly A3 and A4. In para 8 of the complaint preferred by the respondent / complainant , it is specifically stated that the third and fourth accused (petitioners herein) are the Directors of the first accused company and they took part in the day today management of the company and therefore, they are also liable to be punished.

6. The learned counsel appearing for the petitioners cited the Judgment of the Hon'ble Supreme Court in **S.M.S.Pharmaceuticals Ltd., v. Neeta Bhalla**, reported in **(2005) 8 SCC 89** and contended that mere bald statement that the accused was incharge of or was responsible for the conduct of the business is not sufficient and it should be specifically spelled out how and in what manner the Director was incharge of or was responsible for the company for the conduct of the business at the relevant time. In the Judgment, the Hon'ble Supreme Court answered the questions posed in the reference after considering Sections 138 and 141 of the Negotiable Instruments Act, Sections 203 and 204 Cr.P.C and provisions of Companies Act as under :

"19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that 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. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to Question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company

and responsible to the company for the conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

7. Here in this case, the petitioners are shown only as Directors of the company and it is not made clear how and in what manner they were incharge of or was responsible for day today affairs of the company on the date of issuance of the cheques. Mere reproduction of the words in the provisions of law is not suffice to fasten liability on a person and as per the above Judgment of the Hon'ble Supreme Court, it is necessary to aver in the complaint that the Director was in charge of and was responsible for the conduct of the business of the company at the relevant time. In this case the complaint does not depict the same. Therefore, the proceedings in C.C.No.128 of 2010 on the file of the XIII Metropolitan Magistrate, Egmore, as against the petitioners is liable to be quashed, by

P.KALAIYARASAN, J

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invoking the jurisdiction under Section 482 Cr.P.C, as it is nothing but abuse of process of law, by subjecting the petitioners to undergo the ordeal of trial and hence, the same is quashed.

In fine, these Criminal Original Petitions are allowed and the case against the petitioners / A3 and A4 in C.C.No.128 of 2010 on the file of the XIII Metropolitan Magistrate, Egmore, Chennai is quashed. Consequently, connected miscellaneous petitions are closed.

10.11.2016

Index : Yes / No

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To

1. The XIII Metropolitan Magistrate
Egmore, Chennai.
2. The Public Prosecutor,
High Court of Madras, Chennai.

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