

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Cr1.O.P.No.26389 of 2014
and

M.P.No.1 of 2014 & M.P.No.1 of 2015

Santiago james Arokia Mary,
Director,
Solar Designs (P) Ltd., Chennai-600 006.
D/o.Santiago,
Residing at No.6/11, 6th Block,
1st Cross Street, Kannadasan Nagar,
Kodungaiyur,
Chennai-600 118. ... Petitioner/3rd Accused

Vs.

M/s.VJ Traders,
rep. by its Partner Mr.S.Balasubramanian,
Old No.22, New No.43,
Seethammal Road,
Teynampet,
Chennai-600 018. ... Respondent/Complainant

Prayer: Petition filed under Section 482 of Cr.P.C., praying to call for the records in C.C.No.3335 of 2014 pending on the file of the Fast Track Court-III, Metropolitan Magistrate Court, Saidapet, Chennai, and to quash the same.

For Petitioner : Mr.J.Jayabalan

For Respondent : Mr.P.Thirupathi Raj

ORDER

This petition has been filed by the petitioners praying to quash the criminal proceedings in C.C.No.3335 of 2014 pending on the file of the Fast Tract Court-III, Saidapet, Chennai.

2.The brief facts, which are necessary to dispose of this petition, are as follows:-

2-1.The respondent herein filed a private complaint as against the petitioner herein and others, before the Fast Tract Court-III, Saidapet, for the alleged offence under Section 138 of the Negotiable Instruments Act. There are

totally three accused persons in the complaint. The 1st accused is a company viz., Solar Designs (P) Ltd., the 2nd accused is one AAK.Apath Sakayaayem, Managing Director of the 1st accused/company, and the 3rd accused is the petitioner herein, who is the Director of the 1st accused company.

2-2.It is the case of the respondent/complainant that the respondent is dealing in cerabond 27, weber premier adhesives etc., for the past five years. The 1st accused/company had approached the respondent/complainant to do business with them. The accused have given orders to the respondent for supply of goods for their requirements. Accordingly, the respondent supplied goods. During the course of transactions, a sum of Rs.2,76,679/- was payable by the accused to the respondent. Towards the part discharge of the said liability, the accused issued a cheque viz., No.215101, dated 04.01.2014 for a sum of Rs.33,750/-, drawn on Axis Bank, Mylapore, Chennai, in favour of the respondent. Subsequently, as per the request of the accused, the respondent presented the said cheque for encashment through their bankers viz., City Union Bank Ltd., Mount Road Branch, Chennai; but, the said cheque was turned for the reason "funds insufficient" and the same was intimated to the respondent through their bankers on 05.03.2014. Hence, the respondent issued a legal notice dated 26.03.2014 through his counsel to the accused, calling upon the accused to pay the cheque amount within fifteen days. Though the accused received the notice on 27.03.2014, they neither paid the amount nor replied to the notice. Hence, the respondent has filed the private complaint against the accused persons, which culminated in C.C.No.3335 of 2014 on the file of the Fast Tract Court-III, Saidapet. Now, the petitioner, who has been arrayed as 3rd accused, has come forward with the present petition seeking to quash the criminal proceedings, as against her.

3.It is the case of the petitioner that she is a Director of the 1st accused/company and she is not the signatory of the subject cheques. Further more, in the complaint, necessary specific averments ought to have been made, as required under Section 141 of the Negotiable Instruments Act, to the effect that at the time of commission of offence, the persons accused was incharge of and responsible for the conduct of business of the company. But, in the complaint lodged by the respondent herein, no such averments have been made by the respondent as against the petitioner herein to implicate her in the case. In the absence of any specific averments as required under Section 141, the complaint is liable to be quashed as against the petitioner herein. In support of his contention, the learned counsel for the petitioner, has also relied upon the judgment reported in 2005(8) SCC 89 [S.M.S.Pharmaceuticals Ltd., VS. Neeta Bhalla].

4. But, the learned counsel for the respondent, by filing

a detailed counter, submitted that as per Section 291 of the Companies Act, 1956, all the powers of the management of affairs of the company, are vested with the board of Directors, which is working organ of company. So the petitioner, as the Director of the company is responsible for the alleged offence. Though there is no specific averment, as required under Section 141 of the NI Act, there are other materials available to indicate that the petitioner herein/A3 was incharge and responsible for the conduct of the business of the 1st accused/company. Thus, the learned counsel for the respondent sought for dismissal of the petition.

5.Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

6.As per Section 141 of Negotiable Instruments Act, if the person committing offence is a company, every person who at the time of offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. But, to fasten the liability under Section 138 of the Negotiable Instruments Act as against a person, who is incharge and responsible for the conduct of the business of the company, necessary averments should be made in the complaint. In the absence of such averments, the complaint is not maintainable as against such person, especially when the such person is not a signatory to the subject cheques. In this regard, the judgment relied upon by the learned counsel for the petitioner, reported in 2005(8) SCC 89 [S.M.S.Pharmaceuticals Ltd., VS. Neeta Bhalla] gives a fitting answer to the issue involved in this case. The relevant portion in the said judgment reads as follows:-

"It is necessary to specifically aver in a complaint under Section 141 that at the time of offence was committed, the person accused was incharge of, and responsible for the conduct of the 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.

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."

From the dictum laid down in the said judgment, it could be seen that in the absence of any specific averment to the effect that the person accused was incharge of and responsible for the conduct of the business of the company, the complaint is not maintainable as against such person. So far as the present case is concerned, I do not find any specific averment in the complaint, as required under Section 141 of NI Act, as against the petitioner herein/A3. Further, the petitioner is not a signatory to the subject cheques. When there is no specific averment in the complaint to the effect that the petitioner was incharge of and responsible for the conduct of the business of the 1st accused/company, at the time of commission of offence, the complaint is not legally sustained as against the petitioner herein. Hence, I am not inclined to accept the submission made by the learned counsel for the respondent in this regard.

7. For the foregoing reasons, the complaint is liable to be quash so far as the petitioner herein is concerned. Accordingly, the criminal proceedings in C.C.No.3335 of 2014 on the file of the FTC-III, Saidapet, Chennai are quashed so far as the petitioner herein/A3 is concerned. However, the Trial Court is directed to proceed with the other accused.

In fine, the criminal original petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

The Fast Track Court-III,
Saidapet, Chennai.

CrI.O.P.No.26389 of 2014
and
M.P.No.1 of 2014
& M.P.No.1 of 2015

RSI (CO)
CA(17/02/2016)