

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. Nos.21956 to 21960 of 2016

and 29039 and 30178 of 2013

and M.P.Nos.1 and 2 of 2013

CRL.O.P.NO.21956 OF 2016:

Ajay Agrawal

Petitioner in all Ops/Accused

vs.

M/s Integrated Finance Company Limited

Vairams, No.112, Sir Thyagaraya Road

Thyagaraya Nagar, Chennai-17

Rep by its Executive and Authorised Agent

Sri S.Sivagnanam

Respondent in all Ops/Complainant

Coomon Prayer in Crl.OP.21956 to 21960/2016

Criminal Original Petition filed under Section 482, Cr.P.C. to call for the entire records in C.C.No.2362/1999 C.C.Nos.1854/2000,2201/1999,6633/1999 and 2445/1999 respectively formerly on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai and presently pending on the file of Fast Track Court No.3, Saidapet, Chennai 15 and quash the entire proceedings as against the petitioner.

Prayer in Crl.OP.29039 & 30178/2013 Crl.OP.u/s 482 of Cr.P.C. To call for the records in C.C.No.4200/1999 and C.C.No.5344/2000 pending on the file of XVII Metropolitan Magistrate Court, Saidapet, Chennai and quash the entire proceedings as against the petitioner.

For petitioner Mr.R.Amizhdhu
For Respondent Mr.V.P.Raman

Common ORDER

These Criminal Original Petitions have been filed to call for the entire records in C.C.Nos.2362/1999, 1854/2000, 2201/1999, 6633/1999, 2445/1999, 4200/1999 and 5344/2000 formerly on the file of XVII Metropolitan Magistrate Court,

Saidapet, Chennai and presently pending on the file of Fast Track Court No.3, Saidapet, Chennai 15 and quash the entire proceedings as against the petitioner.

2. Integrated Finance Company Limited has filed the aforesaid prosecutions for an offence u/s 138 of the Negotiable Instruments Act against M/s Trident Steels Limited and its Joint Managing Director and others and the complaints are now pending on the file of the Fast Track Court No.III (Magisterial level), Saidapet, challenging which Ajay Agarwal is before this Court.

3. Heard Mr.Amizhdhu, learned counsel for the petitioner/accused and Mr.V.P.Raman, learned counsel for the complainant.

4. It is the case of the complainant that M/s Trident Steels Limited had purchased vehicles under Hire Purchase Agreements and in discharge of the liability, had issued the impugned cheques, which when presented, were dishonoured.

5. After issuing statutory notices u/s 138 of the Negotiable Instruments Act, the aforesaid complaints have been filed on the failure of the accused to repay the money.

6. Learned counsel for the petitioner/accused submitted that Ajay Agarwal has resigned from M/s Trident Steels Limited as early as 30.08.1998 from the position of Joint Managing Director of the Company and further, he had resigned from the Directorship of the said Company from 02.09.1998. The learned counsel has also filed the relevant Form-32 in support of this contention. He further submitted that even before the cheques were presented, M/s Trident Steels Limited had issued a letter dated 02.10.1998 to the complainant informing that Ajay Agarwal has nothing to do with the Company and he is neither a Director nor authorised to operate Bank account of the Company.

7. Per contra, Mr.V.P.Raman, learned counsel for the complainant submitted that Ajay Agarwal had signed the impugned cheques in the capacity of the Joint Managing Director of M/s Trident Steels Limited, on behalf of the said Company.

8. This Court gave its anxious consideration to the rival submissions.

9. Learned counsel for the petitioner/accused placed strong reliance on the judgment of the Supreme Court in DCM Financial Services Limited vs J.N.Sareen & another [(2008) 8 SCC 1], wherein, it is stated as follows:

"21. The cheque in question was admittedly a post- dated one. It was signed on 3-4-1995. It was presented only sometime in June 1998. In the meantime the first respondent had resigned from the directorship of the Company. The complaint petition was filed on or about 20-8-1998. Intimation about his resignation was given to the complainant in writing by the 1st respondent on several occasions. The appellant was, therefore, aware thereof. Despite having the knowledge, the 1st respondent was impleaded as one of the accused in the complaint as a Director Incharge of the affairs of the Company on the date of commission of the offence, which he was not. If he was proceeded against as a signatory to the cheques, it should have been disclosed before the learned Judge as also the High Court so as to enable him to apply his mind in that behalf. It was not done. Although, therefore, it may be that as an authorized signatory he will be deemed to be person in-charge, in the facts and circumstances of the case, we are of the opinion that the said contention should not be permitted to be raised for the first time before us. A person who had resigned with the knowledge of the complainant in 1996 could not be a person incharge of the Company in 1998 when the cheque was dishonoured. He had no say in the matter of seeing that the cheque is honoured. He could not ask the Company to pay the amount. He as a Director or otherwise could not have been made responsible for payment of the cheque on behalf of the Company or otherwise.

(emphasis supplied)

10. This Court has no quarrel with the above proposition of law laid down by the Supreme Court. However, there is a difference between the facts in that case and the facts in the case at hand. Even in the judgment relied upon by the learned counsel for the petitioner/accused, the Supreme Court has very clearly stated that they are arriving at such an opinion in the facts and circumstances of that case.

11. In this case, Ajay Agarwal was the Managing Director of M/s Trident Steels Limited and he is also a signatory to the impugned cheques. In S.M.S. Pharmaceuticals Ltd. vs Neeta Bhalla & another [(2005) 8 SCC 89], the Supreme Court has clearly stated that, a signatory to the cheque cannot escape liability, on the ground that there are lack of averments in the complaint, as required u/s 141 of the Negotiable Instruments Act.

12. As stated above, the petitioner was the Joint Managing Director of M/s Trident Steels Limited and he was also the signatory of the cheques and therefore, he cannot now turn around in the quash applications that the proceedings against him is an abuse of process of law. It is always open to the petitioner to put up such defence before the trial Court.

13. In the result, all these petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

14. Mr.V.P.Raman, learned counsel for the complainant submitted that Integrated Finance Company Limited is under liquidation and that its legal affairs are being managed by one Legal Officer, viz., Ms.Hemajothi. Since the complaints are of the year 1999, this Court directs the complainant to take steps to proceed with the trial and the Fast Track Court-III Judge is directed to complete the trial within six months from the date of receipt of a copy of this order.

15. Mr.Amizhdhu, learned counsel submitted that the presence of Ajay Agarwal may be dispensed with, as he has to come all the way from Bombay for trial.

16. Accepting his submission, Ajay Agarwal is directed to surrender before the trial Court within two weeks from the date of receipt of a copy of this order and on such surrender, he shall be released on bail on the same day u/s 436 Cr.P.C. on he furnishing a bond for Rs.10,000/- [Rupees ten thousand only] with two sureties (common sureties) for a like sum and thereafter, his presence before the trial Court shall be dispensed with on condition that, he shall be present for receiving the charge sheet, for answering the charge, at the time of questioning under Section 313, Cr.P.C. and at the time of passing judgment. He shall file an affidavit of undertaking before the Trial Court that he will not dispute his identity and that the counsel named by him in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (CrI.) 288]. If the petitioner adopts any dilatory tactics, it is open to the Trial Court to insist upon his presence and remand him to custody as laid down by the

Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If thereafter the petitioner absconds, the trial Court shall direct registration of an FIR against him u/s 229-A IPC.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

- 1 The XVII Metropolitan magistrate Court, Saidapet,
- 2.The Prosiding Officer Fast Track Court No.3, Saidapet, Chennai 15.
- 3.The Public Prosecutor, High Court, Madras.

+6cc to Mr.R. Amizhdu, Advocate, S.R.No.69266

vgi(CO)
md(02/01/2017)

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सत्यमेव जयते

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