

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **09.11.2016**

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

**Crl.O.P No.16399 of 2010
and M.P.No.1 of 2010**

Rajkumar T.Menda

Vs.

.. Petitioner

S.Kesavaraj

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the proceedings in Crime No.382 of 2010 pending on the file of the Judicial Magistrate No.3, Salem in so far as it relates to the petitioner herein.

For Petitioner : Mr.K.M.D.Mukilan
for Mr.R.Parthasarathy

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed under Section 482 Cr.P.C, praying to call for the records and quash the proceedings in C.C.No.382 of 2010 pending on the file of the Judicial Magistrate No.III, Salem in so far as it relates to the petitioner herein.

2. It is averred in the petition that the respondent / complainant filed a private complaint alleging that Suresh Menda and the petitioner Rajkumar T.Menda as Directors of M/s. Presidium Constructions (Coimbatore) Pvt., Ltd., approached the respondent / complainant and availed loan of Rs.14,50,000/- on 05.01.2009. In discharging of the said loan, the company issued five cheques for different amounts, two cheques on 05.06.2009; other two cheques on 06.06.2009 and the fifth cheque on 21.06.2009. When the same were presented they were returned by the Bank saying that "The Account has been closed". Therefore, the respondent after issuance of notice filed complaint under Section 138 of Negotiable Instruments Act as against the company and the Directors.

3. The petitioner has resigned from the post of Director with effect from 23.05.2009, i.e., much prior to the issuance of the said cheques and therefore, the petitioner is in no way responsible for the commission of the offence. Hence, the complaint as against the petitioner is to be quashed.

4. Though notice was served on the respondent, he has not appeared.

5. The learned counsel appearing for the petitioner contends that on the date of issuance of the cheques, the petitioner was not Director of the company and there was also no averment in the complaint, how and in what manner the petitioner was incharge of or was responsible to the company for conduct of its business and therefore, the complaint as against the petitioner is to be quashed.

6. The complaint filed by the respondent discloses that loan was obtained on behalf of M/s. Presidium Constructions (Coimbatore) Pvt., Ltd. Towards repayment of the said loan, five cheques were issued, which are dated 05.06.2009, 06.06.2009 and 21.06.2009. The petitioner who was Director of the above said company resigned from the post on 23.05.2009. The petitioner also enclosed copy of Form-32 which depicts that the petitioner resigned from the post of Director of M/s. Presidium Constructions (Coimbatore) Pvt., Ltd., w.e.f 23.05.2009. Therefore, on the date of issuance of the above said cheques, the petitioner was not Director of the company.

7. The learned counsel appearing for the petitioner has also rightly pointed out that there is no specific averments as to how the petitioner was responsible to the company for conduct of

its business on the date of issuance of cheques by citing the Judgment of the Hon'ble Supreme Court in *Gunmala Sales (P) Ltd., v. Anu Mehta*, reported in (2015) 1 SCC 103. In this ruling, it has been held as follows :

17... It is clear that this is a case where the basic averments in terms of Section 141 were absent and the two-Judge Bench followed *SMS Pharma (S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla*, (2005) 8 SCC 89) and confirmed the quashing of the complaint. The relevant paragraph of this judgment (*N.K. Wahi v. Shekhar Singh*, (2007) 9 SCC 481) needs to be quoted: (*N.K. Wahi case*, SCC p. 483, para 8)

"8. To launch a prosecution, therefore, against the alleged Directors there must be a specific allegation in the complaint as to the part played by them in the transaction. There should be clear and unambiguous allegation as to how the Directors are in-charge and responsible for the conduct of the business of the company. The description should be clear. It is true that precise words from the provisions of the Act need not be reproduced and the court can always come to a conclusion in facts of each case. But still, in the absence of any

averment or specific evidence the net result would be that complaint would not be entertainable."

24... This Court looked into the certified copy of the annual return, which was a public document as per the Companies Act read with Section 74(2) of the Evidence Act and held that the appellant had resigned from the directorship of the company much prior to the issuance of the cheques. While setting aside the High Court's order, this Court reiterated that in case of a Director, the complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the company for conduct of its business and mere bald statement that he or she was in charge of and was responsible to the company for conduct of its business is not sufficient. This Court observed that in the case before it except for the mere bald and cursory statement with regard to the appellant, the complainant had not specified her role in the day-to-day affairs of the company and on this ground alone, the appellant was entitled to succeed."

8. This Court perused the compliant. There is absolutely no averment as to how the petitioner was incharge of or was responsible to the company for conduct of its business on the date

of issuance of the cheques. As per Form-32, which is a public document, the petitioner had resigned from the post of Director of the company much prior to the date of issuance of the cheques in question. Therefore, it is a fit case to exercise the jurisdiction of this Court under Section 482 Cr.P.C and quash the proceedings as against the petitioner. Accordingly, the same is quashed.

In fine, this Criminal Original Petition is allowed and the proceedings in C.C.No.382 of 2010 pending on the file of the Judicial Magistrate No.III, Salem in so far as it relates to the petitioner herein is quashed. Consequently, connected miscellaneous petition is closed.

09.11.2016

Index : Yes / No

tsvn

To

1. The Judicial Magistrate No.3
Salem.
2. The Public Prosecutor,
High Court of Madras, Chennai.

P.KALAIYARASAN, J
tsvn

CrI.O.P No.16399 of 2010

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