IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.Nos.29082, 29083, 29084 and 29085 of 2013
and M.P.Nos.1, 1, 1, 1, 2, 2, 2 and 2 of 2013

1.P.Murthy
2.Dr.D.Santhosh Kumar
3.A.S.Mohan Kumar
4.S.Maheshwaran
5.Dr.P.Ramaraj .. Petitioners in Crl.OP.Nos.29082 and 29084 of 2013/(Accused 5to9)

1.S.K.C.Aanandhan
2.Annakodi Podaran .. Petitioners in Crl.OP.Nos.29083 and 29085 of 2013(Accused 3&10)

Vs.

M/s.Sri Venkateswara Steels
rep. by its Partner - M.Sivasami .. Respondent in Crl.OP.Nos.29082 and 29083 of 2013

M.Rajendran .. Respondent in Crl.OP.Nos.29084 and 29085 of 2013

Crl.OP.Nos.29082 and 29083 of 2013: Criminal Original Petitions are filed under Section 482 of Cr.P.C., to call for the records in STC. No.2913/2011 on the file of the Judicial Magistrate, Kangeyam and to quash the same insofar as it relates to the petitioners herein.

Crl.OP.Nos.29084 and 29085 of 2013: Criminal Original Petitions are filed under Section 482 of Cr.P.C., to call for the records in STC. No.2926/2011 on the file of the Judicial Magistrate, Kangeyam and to quash the same insofar as it relates to the petitioners herein.

For Petitioners :Mr.V.P.Sengottuvel
in all the petitions

For Respondent :Mr.N.Manokaran
in all the petitions

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COMMON ORDER

Crl.OP.Nos.29082 and 29083 of 2013 have been filed by A5 to A9 and A3 and A10 respectively in STC No.2913/2011, on the file of the Judicial Magistrate, Kangeyam. Crl.OP.Nos.29084 and 29085 of 2013 have been filed by A5 to A9 and A3 and A10 respectively in STC No.2926 of 2011 on the file of the Judicial Magistrate, Kangeyam. All these Petitions have been filed to quash the proceedings initiated under section 138 of the Negotiable Instruments Act (hereinafter shortly referred to as 'Act').

2. The criminal proceedings in STC No.2913/2011 is arising out of the complaint instituted by the respondent herein viz., Sri Venkateswara Steels rep. by its Partner - M.Sivasami, against A1 to A10 for the offence under section 138 of the Act, by alleging that the first accused by name Sree Selvakumaran Educational Society represented by its President P.Balasubramaniam is a registered society under the Act and A2 is the President; A3 is the Vice President; A4 is the Secretary; A5 is the Joint Secretary; A6 is the Treasurer; A7 and A8 are the administrative Committee members and A9 and A10 are the members of the said Society and they have purchased the building materials for construction of their College from 06-02-2010 to 20-03-2010 to the tune of Rs.21,46,095.68. To discharge the portion of the said liability, A2 and A4 on behalf of A1-Society have issued a cheque dated 28.03.2011 for Rs.6,46,095/-, which was presented for encashment and was returned dishonoured for 'insufficient funds'. Thereafter, at the request of the accused, the cheque was represented on 28.05.2011 and it was again returned dishonoured for the second time on 30.05.2011 for want of sufficient funds. Therefore, after issuance of the statutory notice, the respondent filed the complaint, which was taken on record as STC.No.2913 of 2011 by the Judicial Magistrate, Kangeyam.

3. Likewise, A2 and A4 on behalf of A1-Society have issued another cheque dated 06.04.2011 for Rs.19,50,000/- towards repayment of loan to the respondent by name M.Rajendran. When the cheque was presented for encashment, it was returned dishonoured for want of sufficient funds on 11.04.2011. Thereafter, at the request of the accused, the cheque was represented on 28.05.2011 and it was again returned dishonoured for the second time on 30.05.2011 for want of sufficient funds. Therefore, after issuance of the statutory notice, the respondent filed the complaint, which was taken on record as STC.No.2926 of 2011 by the Judicial Magistrate, Kangeyam.

4. Now, except A1, A2 and A4, other accused have come forward with the present petitions to quash the criminal proceedings in STC Nos.2913 and 2926 of 2011, pending on the file of the Judicial Magistrate, Kangeyam.

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5. The learned counsel for the petitioners has raised the following grounds for quashing the proceedings: (i) Though A7 to A9 in both the cases, are the members of the Society, they have resigned from their membership as on 5.3.2010, as per the resolution taken in the Executive Committee Meeting of A1 Society held on 5.3.2010, which was duly incorporated in Form VI furnished to the Registrar of Societies and hence, they are not responsible for the dishonour of the cheques in question, which have been issued, after they resigned from the post. (ii)Insofar as A5 and A6 are concerned, they have given their resignation, which were accepted in the Extraordinary General Body Meeting of A1 Society held on 28.5.2011 and the same were duly mentioned in Form VI submitted to the Registrar of Societies. Even though, they have resigned, after issuance of the cheques on 28.3.2011 and 6.4.2011, there is no specific averment made in the complaints against those accused. (iii)In respect of A3 and A10, no averment is raised against them to the effect that they have actively participated in the day today administration of A1 Society, during the relevant point of time, so as to attract the offence under section 141 of the Act. The learned counsel for the petitioners, in support of his argument, also relied on the decision of the Hon'ble Supreme Court reported in (2014) 16 SCC 1 (Pooja Ravinder Devidasani v. State of Maharashtra and another).

6. Resisting the contention so raised on the side of the petitioners, the learned counsel for the respondent would submit that the document filed under Form VI is not in accordance with Section 15(1) of the Tamil Nadu Societies Registration Act, 1975. He further submits that in clause III (6) of the Inspection report of the Registrar of Societies dated 29.10.2012, it was specifically mentioned that the meeting of A1 Society was conducted only on 19.09.2011 and therefore, no meeting was conducted either on 5.3.2010 or on 28.05.2011 as claimed by the petitioners and Form VII relating to change of members has also not been filed by the petitioners.

7. The learned counsel for the respondent also denied the submission of the learned counsel for the petitioners that A5 to A9 are not the members of the society on the date of issuance of the cheques in question. He submits that the transaction has been taken place between 06.02.2010 and 20.3.2010 and at that time, all the petitioners were the members of the society. Therefore, all of them are held to be responsible and are jointly liable to pay the cheque amount. He further submits that there are sufficient averments raised in the complaints against the petitioners, as per Section 141 of the Act and all the changes regarding the membership of the petitioners, have been introduced only after initiation of the criminal proceedings. Therefore, he prayed for dismissal of all the petitions.

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8. To substantiate his argument, the learned counsel for the respondent also relied on the decisions of the Hon'ble Supreme Court reported in (i)(2007) 5 SCC 108 (N.Rangachari v. Bharat Sanchar Nigam Ltd) and (ii)(2008) 17 SCC 147 (Malwa Cotton and Spinning Mills Limited v. Virsa Singh Sidhu and others).

9. I have considered the rival submissions made by both sides and perused the documents filed in the form of typed set of papers.

10. It is an admitted fact that A1 is a registered Society, in which, A2 to A10 are the members and their official capacity is already mentioned in para 2 of this order. It is also admitted that the cheques have been issued only by A2 and A4 in their capacity as President and Secretary respectively, on behalf of A1 Society.

11. Now, the first point to be considered herein is as to whether Form VI filed by the petitioners before the Registrar of Societies is acceptable one.

12. It is true that as per section 15(1) of the Tamil Nadu Societies Registration Act, 1975, r/w Rule 17(2) of the Tamil Nadu Societies Registration Rules, 1978, the notice of any change among the members of the Society shall be filed in Form No.VII within three months from the date of such change and the same shall be accompanied by the resolution of the meeting, if any, effecting such change.

13. At this juncture, it would be appropriate to refer Sections 14 and 15 of the Tamil Nadu Societies Registration Act and Rules 16 and 17 of the Tamil Nadu Societies Registration Rules, which read as follows:

> "Section 14. Register of members -
>
> (1)Every registered society shall maintain a register containing the names, addresses and occupations of its members.
> (2) The register of members shall, during business hours, be open to the inspection of any member free of charge and any member may make extracts therefrom.
> Section 15. Committee -
> (1) Every registered society shall have a committee of not less than three members to manage its affairs. Every registered society shall file with the Registrar a copy of the register maintained by it under sub section (1) of Section 14 and from time to time, file with the Registrar notice of any change among the members of the committee.

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(2)A copy of the register shall be filed either at the time of the registration of the Society or within such period as may be prescribed from the appointment of the members of the first committee and the notice of any change among the members of the society or of the committee shall be filed within such period as may be prescribed from the date of such change.

(3)The members of the committee shall be appointed at a meeting of the society by a resolution of a majority of the members present and entitled to vote thereat.

(4)The term of office of the members of the committee shall not exceed three years from the date of their appointment.

(5)The members of the committee shall be eligible for re-appointment".

"Rule 16: Register of members- The register of members specified in sub section (1) of Section 14 shall be in Form No.VI.

Rule 17. Filing of copy of the register of members and notice of change of members or committee -

(1) A copy of the register of members maintained by the Society under sub section (1) of Section 14, if not filed at the time of registration of the Society, shall be filed with the Registrar within one month from the date of registration of the society.

(2)The notice of any change among the members of the society or of the committee shall be filed in Form No.VII within three months from the date of such change. The notice of change among the members of the committee shall be accompanied by the resolution of the meeting, if any, effecting such change".

14. As per the provisions of law extracted above would reveal that any change of members that has been made in the meeting by a resolution, shall be intimated to the Registrar by way of Form No.VII within a period of three months from the date of such change and the same shall be accompanied by the resolution of the meeting. Whereas, in this case, the petitioners have filed only a Form No.VI regarding the register of members of the Society and they have not filed Form No.VII regarding change of members before the Registrar of Societies. In that event, this court is unable to accept the argument advanced on the side of the petitioners that A7 to A9 have been resigned from their membership with effect from 5.3.2010 and a resolution has been passed to that effect.

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15. Similarly, insofar as A5 and A6 are concerned, according to the learned counsel for the petitioners, they have resigned from the membership on 28.5.2011. However, neither a copy of the special resolution nor a copy of Form No.VII relating to change of members has been produced for perusal of this court. Further, the cheques in question have been issued, much before their resignation.

16. The next point to be decided herein is as to whether the petitioners are liable to be prosecuted for the offence under Section 138 of the Act.

17. The learned counsel for the respondent contended that the transaction relating to supply of building materials, has been taken place between 06.02.2010 and 20.03.2010. To discharge the amount due to the respective complainant, two cheques were issued by A2 and A4 on behalf of A1 Society. For the discussions held in the foregoing paragraphs, A3 and A5 to A10 were the members of the Society during the relevant of point.

18. As per the observation of the Hon'ble Supreme Court in the decision reported in (2014) 16 SCC 1 (Pooja Ravinder Devidasani v. State of Maharashtra and other), there must be specific averments against all the members to show that they are responsible for the conduct of business of the Society, so as to attract the offence under Section 141 of the Act. Before considering the said decision, it is relevant to look into the judgements relied on by the learned counsel for the respondent.

19. Though this Court has no quarrel with the observation made by the Hon'ble Supreme Court in the judgement reported in (2007) 5 SCC 108 (N.Rangachari v. Bharat Sanchar Nigam Ltd) cited by the learned counsel for the respondent, the same is not applicable to the facts of the present case. In another judgement reported in (2008) 17 SCC 147 (Malwa Cotton and Spinning Mills Limited v. Virsa Singh Sidhu and others), the High court quashed the proceedings on the ground that there was no specific allegations and some general allegations were made that all Directors were responsible. However, the Apex Court held that factual disputes were involved, which were required to be established in trial and the High court was not justified in quashing the proceedings while dealing with application under section 482 and accordingly, allowed the appeal.

20. However, in the latest decision reported in (2014) 16 SCC 1 (Pooja Ravinder Devidasani v. State of Maharashtra and other), cited on the side of the petitioners, it has been held

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that for making a Director liable, there must be specific averments against the Director showing as to how and in what manner he/she was responsible for conduct of business of the company. For better appreciation, the relevant paragraphs of the said decision are extracted hereunder:

> "16.Before delving into the merits of the case, it would be apt to take note of relevant portions of the complaints filed by Respondent 2 which read thus: "I say that accused 2 to 5 on behalf of accused 1 have approached us with request for trade finance facility and accordingly the said facility has been granted by us to the accused as per their request and requirement.
>
> I say that accused 1 is a private limited Company of which accused 2, 3 and 5 are Directors and accused 4 is the Director and authorized signatory of accused 1 M/S Elite International Pvt. Ltd.—Imprest. At all material time relevant and relating to the complaint, accused 2 to 5 were and are in charge of and responsible for the conduct of business of accused 1 and are also looking after day to day affairs of accused 1. It is further submitted that accused 2 to 5 with accused 1 are liable to be prosecuted and / or connived in the commission of the present offence, in their capacity as a Director/signatory of the said private limited Company.
>
> I say that as narrated in para 4 accused 2 to 5 being responsible for the affairs of accused 1 i.e. private limited Company are liable to be prosecuted for having committed a criminal offence in the event of failure on their part to comply with the requisitions contained in the statutory notice dated 03-11-08, which was sent to them both under R.P.A.D. & U.P.C. on 06/11/08. I say that notice was received by all the accused on or about 08/11/08 and notice sent through U.P.C. are deemed to have been served. However, the accused have failed and neglected to make our payment under the abovesaid dishonoured cheques".

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> "20. In other words, the law laid down by this Court is that for making a Director of a Company liable for the offences committed by the Company under Section 141 of the N.I. Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company."

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"22. As held by this Court in Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors. (1998) 5 SCC 343, summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

21. In the case on hand, all the President, Vice President, Secretary, Treasurer, Joint Secretary and other members attached to A1 Society have been implicated as accused for the offence punishable under Section 141 of the Act. This Court is of the view that a person, who is the signatory of the cheque and who is active participant in the day today administration of the business, is liable to be prosecuted for dishonour of the cheque. Sleeping partner and other Director or the members, who were not actively involved in the conduct of business, are not liable to be prosecuted. In such circumstances, it was held by the Apex Court in the decision cited by the learned counsel for the petitioners that there must be specific averments against each and every member, as to how and in what manner, they are responsible for the conduct of the business of the Society.

22. Accordingly, the reading of the averments made in the complaints would disclose no allegation against the petitioners herein to the effect that they have actively participated in the conduct of business of the Society. There is no specific averment made in the complaints to hold that these petitioners are responsible for the day today administration of the business on behalf of A1 Society. In the absence of any such averment, merely because they are holding the post of office bearers of the Society, they will not be vicariously liable for the dishonour of the cheques in question. Further, it is pertinent to point out at this juncture that as per the averments made in the complaints, the cheques in question were issued only by A2 and A4 on behalf of A1 Society. Under such circumstances, I am of the view that the averments made in the complaints are not sufficient enough

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to hold that the petitioners are active participants in the day today administration of the business of A1. Therefore, by applying the dictum laid down in the decision reported in (2014) 16 SCC 1 (cited supra), this court is inclined to quash the proceedings initiated against the petitioners herein for the offence under section 138 of the Act.

23. In the result, all the Criminal Original Petitions are allowed and the proceedings in STC.Nos.2913 and 2926 of 2011 pending on the file of the Judicial Magistrate, Kangeyam are quashed, insofar as the petitioners/A3, A5, A6, A7, A8, A9 and A10 are concerned. In respect of other accused viz., A1, A2 and A4, the Judicial Magistrate, Kangeyam is directed to dispose of the cases as per law, within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rk

To

The Judicial Magistrate,
Kangeyam.

Copy to: The Section Officer, Criminal Section,
High Court, Madras 104.

+1cc to Mr.Vp.Sengottuvel, Advocate, S.R.No.17267
+4ccs to Mr.N. Manokaran, Advocate, S.R.No.17238 to 17241

SV(CO)
EU(13/04/2016)

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