

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.OP.Nos.7448 & 7449 of 2016

and

Crl.MP.Nos.3930 to 3933 of 2016

1.K.S.Rangasamy

2.R.Rajammal

3.R.Srinivasan

...Petitioners in both Crl.OPS./Respondents 2,3 & 6

Vs.

M.Hemalatha ... Respondent in Crl.OP.7448/16/Complainant

K.Sekar ... Respondent in Crl.OP.7449/16/Complainant

Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure to call for the records in STC Nos.228 and 229 of 2016 pending on the file of the learned Judicial Magistrate, Thiruchengode, under Sections 138, 142 and 143 of the Negotiable Instruments Act and to quash the same.

For Petitioners : Mr.S.Ramesh
in both Crl.OPs

For Respondents : Mr.T.Muruga Manickam
in both Crl.OPs

C O M M O N O R D E R

These petitions have been filed to quash the proceedings in STC. Nos.228 and 229 of 2016 pending on the file of the learned Judicial Magistrate, Thiruchengode under Sections 138, 142 and 143 of the Negotiable Instruments Act.

2. For the sake of convenience, the parties will be referred to as complainant and accused. It is the case of the complainant that they had supplied fire wood to M/s.Summer India Textiles and Mills Pvt. Ltd. [A1] for over a period of time and in discharge of the liability accrued therein, M/s.Summer India Textiles and Mills Pvt. Ltd. [A1] issued two cheques for Rs.10,00,000/- each and Rs.5,00,000/- each, which when presented, were dishonoured and after issuing the statutory notice under Section 138 of Negotiable Instruments Act, the complainant has lodged prosecution in STC.No.228 of 2016 and STC.No.229 of 2016 before the learned Judicial Magistrate, Tiruchengode, challenging which, Rangasamy [A2], Rajammal [A3] and Srinivasan [A6] are before this Court.

3. Heard Mr.S.Ramesh, learned counsel for the accused and Mr.T.Muruga Manickam, learned counsel for the complainant and perused the materials available on record.

4. Mr.Ramesh, learned counsel for the accused contended that Rangasamy [A2], Rajammal [A3] and Srinivasan [A6] had resigned from the directorship w.e.f. 31.03.2013 and Form-32 has been filed with the Registrar of Companies on 19.04.2013, a copy of which forms part of the typed set of papers. But, whereas the impugned cheque was issued only in the year 2015, which was much later and therefore, they cannot be made liable.

5. Per contra, Mr.Muruga Manickam, learned counsel for the complainant strongly resisted the contention and submitted that the petitioners/accused were the founder directors of the 1st accused Company and their resignation is an internal matter, which cannot be put against the complainant.

6. This Court gave its anxious consideration to the rival submissions. On reading of the complaint, it is stated that the complainant issued statutory notice and the petitioners/accused have replied to the statutory notice stating that they are not directors of the Company.

7. Mr.Muruga Manickam, learned counsel for the complainant placed strong reliance on the judgment in N.Rangacharai Vs Bharat Sanchar Nigam Ltd. 2007[3] CTC 495 and contended that these are contentious issues which cannot be looked into, in a quash proceedings under Section 482 Cr.P.C.

8. Per contra, Mr.Ramesh, learned counsel for the accused placed reliance upon the judgment in Pooja Ravinder Devidasani Vs State of Maharashtra and another [2014] 16 SCC 1, wherein, in paragraph Nos.21 and 25, the Hon'ble Supreme Court has held as follows :

"21. ... By verbatim reproducing the words of the section without a clear statement of fact supported by proper evidence, so as to make the accused vicariously liable, is a ground for quashing proceedings initiated against such person under Section 141 of the NI Act.

25. A bare reading of the averment of Respondent 2 before the High Court, suggests that his case appears to be that the appellant has not proved her resignation in unequivocal terms and it is a disputed question of fact. It is noteworthy that Respondent 2 except making a bald statement and throwing the burden on the appellant to prove authenticity of documents, has not pleaded anywhere that the public documents Form 32 and annual return

are forged and fabricated documents. Curiously, Respondent 2 on the one hand raises a doubt about the genuineness of Form 32, a public document, through which the default Company had communicated the change of Directors to the Registrar of Companies with the effect of resignation of the appellant and induction of two Directors-Operations and on the other hand, he has arrayed the two newly appointed Directors-Operations as the accused whose names were communicated to the Registrar of Companies by the very same Form 32. The respondent complainant cannot be permitted to blow hot and cold at the same time. When he denies the genuineness of the document, he cannot act upon it and array the newly appointed Directors as accused."

9. This Court is bound by the subsequent judgment of the Hon'ble Supreme Court namely, Pooja Ravinder Devidasani Vs State of Maharashtra and another and the facts of this case fits within the law laid down therein. Accordingly, these petitions are allowed and the proceedings in STC.Nos.228 and 229 of 2016 pending on the file of the learned Judicial Magistrate, Thiruchengode, as against the petitioners/accused 2, 3 and 6 hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Judicial Magistrate, Thiruchengode.

2.-do- thro' The Chief Judicial Magistrate, Namakkal.

3.The Public Prosecutor, High Court, Chennai.

+ 1 cc to Mr.S.Ramesh, Advocate Sr 39649

+ 2 ccs to Mr.T.Muruga Manickam, Advocate Sr 39606, 39608

KR/26/7/16

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