

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.R.C.No.387 of 2011

K.K.Mani

...Petitioner

Vs.

1. Aditya Exports,
a partnership firm,
rep. By its partner,
R.Ravichandran, S/o. P.S.Rangasamy,
Komarankattu Thottam,
Thangankattur, Pappampalayam Village,
Grey Nagar Post, Perundurai Taluk.
2. R.Ravichandran,
Partner, Aditya Exports
S/o. P.S.Rangasamy,
Komarankattu Thottam,
Thangankattur, Pappampalayam Village,
Grey Nagar Post, Perundurai Taluk.
3. N.Sadasivan,
Partner, Aditya Exports,
S/o. Nachimuthu,
No.1, E.K.S. Street,
Kollampalayam,
Erode - 2.
4. Rajeswari,
Partner, Aditya Exports
W/o. R.Ravichandran,
Komarankattu Thottam,
Thangankattur, Pappampalayam Village,
Grey Nagar Post, Perundurai Taluk.
5. K.C.Easwaramurthy,
Partner, Aditya Exports,
S/o. Chennimalai Gounder,
Karandipalayam,
Grey Nagar Post,

Vijayamangalam Via.,
Perundurai Taluk.

.... Respondents

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure Code to set aside the order dated 04.01.2011 passed in C.C.No.3 of 2011 on the file of the District Munsif-cum-Judicial Magistrate, Perundurai and to allow the Criminal revision Case.

For Petitioner : Mr. A.K.Kumaraswamy
For respondent No.3 : Mr.N.Manokaran

O R D E R

Challenging the order dismissing the private complaint against the respondents 3 to 5, the complainant/petitioner has filed the present revision case.

2. The petitioner has filed a private complaint against the respondents herein under Section 138 of the Negotiable Instruments Act. The case of the petitioner/complainant was that the first respondent is a partnership firm and the respondents 2 to 5 are its partners and they are looking after the day to day affairs of the first respondent partnership firm. The second respondent borrowed a sum of Rs.60,000/- on behalf of the first respondent firm and in order to discharge the loan, the second respondent issued a post dated cheque drawn on Indian Bank, Erode Branch, dated 28.02.2010. When the petitioner/complainant presented the cheque, the same was dishonoured as "funds insufficient". Subsequently, he issued a notice to the second respondent and the second respondent promised him that he will honour the cheque. Hence, once again, he presented the cheque in the Canara Bank, Thingalur Branch, again the cheque was dishonoured on the same ground. Hence, after issuing notice to all the accused, he filed a complaint.

3. The learned Judicial Magistrate, after taking cognizance against the respondents 1 and 2, holding that a prima facie case has been made out against A1 and A2, and issued process to A1 and A2, but dismissed the complaint against the respondents 3 to 5 holding that no prima facie case is made out against them.

4. Challenging the above order, the petitioner/complainant has filed the present revision before this Court.

5. The learned counsel for the petitioner would submit that there is a clear averment in the complaint that the respondents 3 to 5 are actively involved in the day to day

affairs of the firm and he has also given a sworn statement to that effect. But the learned Judicial Magistrate, without considering the same, mechanically, held that prima facie case has been made out only as against A1 and A2 and dismissed the complaint against the other respondents. When there is a clearly averment in the complaint that the respondents 3 to 5 also involved in the day to day affairs of the firm, the learned Judicial Magistrate ought not to have dismissed the complaint.

6. Even though notice was issued to all the respondents, third respondent only appeared through counsel and none was represented on behalf of the other respondents.

7. The learned counsel for the third respondent would submit that they are only sleeping partners and they have nothing to do with the day to day affairs of the company and only the second respondent was managing the affairs of the company and he is no way connected with the company and they have been falsely implicated in this case.

8. I have heard the submissions of the learned counsel for the petitioner and the learned counsel appearing for the third respondent. I have carefully gone through the materials available on record. From the averments made in the complaint, it merely says that the respondents 2 to 5 are all partners, actively, involved in the day to day affairs of the firm and they are also responsible for the conduct of the day to day business. Except that there is no other averments made in the complaint. It is settled law that mere reproducing the words found in the section without a clear statement of fact supported by proper evidence to show that they are also actively involved in the day to day affairs of the firm to make the other partners also vicariously liable, the petitioner cannot maintain the complaint against the other accused.

9. The Hon'ble Supreme Court, in a case reported in Pooja Ravinder Devidasani /vs/ State of Maharashtra and another in 2014 (16) SUPREME COURT CASES has held as follows :-

" 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 NIC 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.

21. In Sabitha Ramamurthy v. R.B.S. Channabasavaradhya, it was held by this Court that : (SCC pp.584-85, para 7)

:7..... it is not necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused is vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company".

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.

10. In the instant case, except the bare averments that the other respondents also involved in the day to day affairs of the firm, there is no specific averments against the other respondents 3 to 5 to show that how they are also involved in the day to day affairs of the firm.

11. In the above circumstances, I find no infirmity or illegality in the order passed by the learned Judicial Magistrate. Hence, this revision is liable to be dismissed.

12. The learned counsel for the petitioner would submit that now the second respondent/A2 is contesting the revision and the matter is pending from 2011.

13. In the result, the Criminal Revision Case is dismissed and the learned Judicial Magistrate, Perundurai is directed to dispose of the C.C.No.3 of 2011 within a period of 6 months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mrp

To

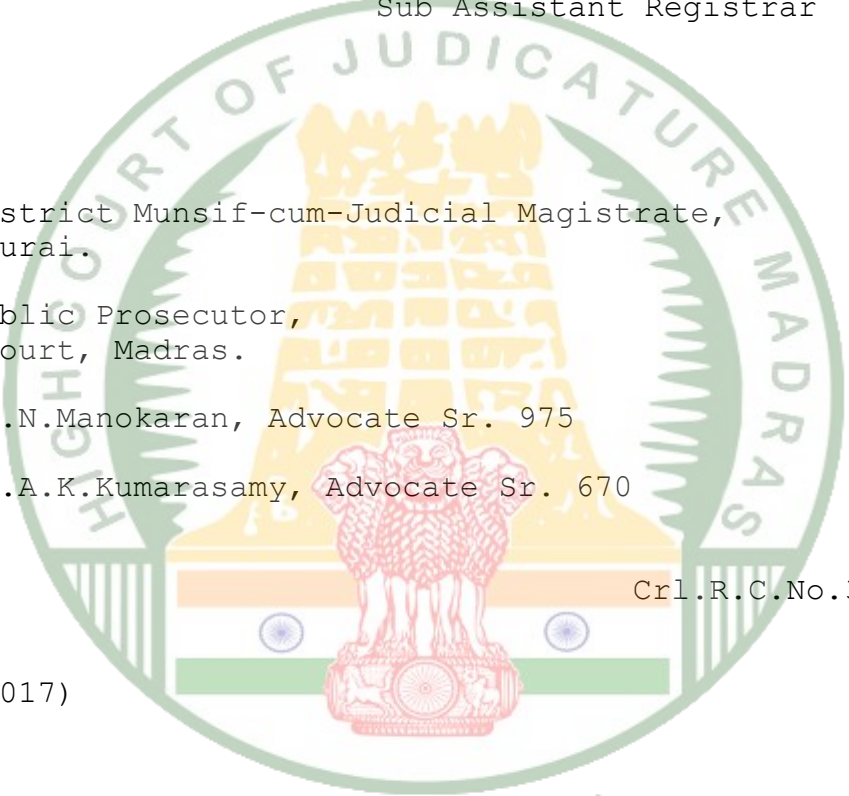
1. The District Munsif-cum-Judicial Magistrate,
Perundurai.
2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate Sr. 975

+1cc to Mr.A.K.Kumarasamy, Advocate Sr. 670

Cr1.R.C.No.387 of 2011

BR(CO)
VR(23/06/2017)



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