

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2017

DELIVERED ON : 03.08.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.O.P.Nos.4327, 4328, 4329 of 2012,
23952, 23992, 24415 and 24417 of 2012

1.M/s.RTC Logistics Pvt. Ltd.,
represented by its Director
S.M.Sridhar,
Bombay Mutual Buildings,
6th Floor, 232, N.S.C. Bose Road,
Chennai - 01.

2.M.G.Mujadid

3.S.M.Sridhar

4.R.Ramanathan

5.Ramanathan ... Petitioners in Crl.O.P.Nos.4327,
4328, 4329, 23952, 24415 and
24417/2012

1.M/s.RTC Logistics Pvt. Ltd.,
represented by its Director
S.M.Sridhar,
Bombay Mutual Buildings,
6th Floor, 232, N.S.C. Bose Road,
Chennai - 01.

2.S.M.Sridhar

3.R.Ramanathan

4.Ramanathan

...Petitioners in Crl.O.P.No.23992/2012

vs

1.M/s.Shriram City Union Finance Limited,
Having Office at
221, Royapettah High Road,
Mylapore, Chennai - 600 004.
represented by G.Ravi, N.Ganesan,

2.Osman Ali Khan (Died) ... Respondents in Crl.O.P.Nos.4327,
4328 and 4329/2012

M/s.Shriram City Union Finance Limited,
Having Office at
221, Royapettah High Road,
Mylapore, Chennai - 600 004.
represented by B.Devi ... Respondent in Crl.O.P.Nos.23952,
23992, 24415 and 24417 of 2012

Criminal Original Petitions filed under Section 482 Cr.P.C. praying to
call for records in C.C.Nos.4544, 6094, 5914 of 2011, 1115, 1161, 1063 and 491
of 2012 on the file of learned XVIII Metropolitan Magistrate, Saidapet, Chennai
and quash the same.

Appearance in all Petitions:

For Petitioners

: Mr.A.Padmanaban

For Respondents

: Mr.R.Uma Shankar for
M/s.Sri and Shankar Associates

COMMON ORDER

Petitioners seek quash of cases pending trial for offences u/s.138 of the Negotiable Instruments Act in C.C.Nos.4544, 6094, 5914 of 2011, 1115, 1161, 1063 and 491 of 2012 on the file of learned XVIII Metropolitan Magistrate, Saidapet, Chennai.

2. As the parties in all cases are common as are the rival contentions, this Court proceeds to dispose of all the petitions by a common order.

3. Complainant preferred complaints informing that first accused company was engaged in business of manufacturing ferrous and non-ferrous forgings, accused 2 and 3 are Directors thereof involved in the day-to-day affairs of the first accused company. Second accused, in such capacity, approached first respondent in Crl.O.P.Nos.4327, 4328 and 4329/2012 and respondent in Crl.O.P.Nos.23952, 23992, 24415 and 24417 of 2012 for advancement of loan and entered into agreements. Pursuant thereto, a sum of Rs.40,00,000/- (in each case) was advanced to first accused company and tenure for repayment with interest was fixed as 24 months. Fourth accused, in

capacity of authorized signatory of first accused company, had issued cheques bearing Nos.(i)439477 dated 02.02.2011, (ii)439476 dated 02.01.2011, (iii)439474 dated 02.11.2010 (iv)439480 dated 02.05.2011 (v)439475 dated 02.12.2010 (vi)439473 dated 02.10.2010 and (vii)439478 dated 02.03.2011 drawn on Andhra Bank, Chennai Main Branch, towards payment of EMI. Upon presentation, cheques were returned unpaid for the reason 'insufficient funds'. Complainant caused statutory notice and following the procedure envisaged under Section 138 of the Negotiable Instruments Act, complaints had been filed.

4. Heard learned counsel for petitioners and learned counsel for respondents.

5. Learned counsel for petitioners submitted that first accused company fell into financial crisis, the Chairman and Managing Director of first accused company died and the company became defunct from June 2010. Complainant, having terminated the loan agreement and claimed the entire dues by demand notice had also presented for collection the post-dated cheques issued by first accused company. Once loan agreements were terminated, it was not open to

complainant to seek payments on cheques intended to be encashed during the pendency thereof. Learned counsel submitted that petitioners are not in charge and responsible for day-to-day affairs of the first accused company and it was only the Chairman and Managing Director of first accused who was so responsible. Learned counsel further submitted that the third accused had resigned from the first accused company on 04.01.2010, which fact had been notified to the Registrar of Companies.

6. Learned counsel referred to decision of Apex Court in ***National Small Industries Corporation Limited v. Harmeet Singh Paintal and another*** [2010 (2) SCC (Cri) 1113] and the following therein:

“22. Therefore, this Court has distinguished the case of persons who are in charge and responsible for the conduct of the business of the company at the time of the offence and the persons who are merely holding the post in a company and are not in charge of and responsible for the conduct of the business of the company. Further, in order to fasten the vicarious liability in accordance with Section 141, the averment as to the role of the Directors concerned should be specific. The description should be clear and there should be some unambiguous allegations as to how the Directors concerned were alleged to be in charge of and were responsible for the conduct and affairs of

the company.”

7. Learned counsel submitted that allegations in the complaint against accused 2, 3, 5 and 6 stopped with informing that they were Directors involved in the day-to-day affairs of the first accused/company. Such bald statement would not suffice towards requiring them to answer a charge of commission of offence u/s.138 of the Negotiable Instruments Act. Apex Court in ***National Small Industries Corporation Limited's*** case had dealt with a case wherein similar allegations stood made and held that a Director of Company who was not in charge and responsible for the conduct of business of company could not be required to answer a charge of commission of criminal offence and as Section 141 was a penal provision, which created vicarious liability, the same ought to be strictly construed. Apex Court had informed that it was not sufficient to make a bald statement in the complaint that the Director was responsible for the conduct of the business of the company. It was necessary that the complaint spell out how and in what manner such Director fulfilled such capacity and held such responsibility. Allegations against the Directors concerned should be specific and unambiguous in informing such position. Issue of summons would put an accused to harassment and before doing so Court should insist on strict compliance with the statutory requirements of Section

200 Cr.P.C. Complainant is duty bound to make submissions on oath on how offences stood committed and how persons accused are responsible therefor. As Section 141 of the Negotiable Instruments Act raises a legal fiction of liability of Directors who are in charge and responsible to a Company in the conduct of its affairs, it absolutely was necessary to inform particulars of how they fulfilled such capacity. Decisions of Apex Court in ***Sabitha Ramamurthy and another v. R.B.S. Channabasavaradhya* [AIR 2006 SC 3086(1)]** and ***Central Bank of India v. Asian Global Limited and others* [2011 (1) SCC (Cri) 167]** also were relied upon towards impressing the same contentions.

8. Learned counsel for respondents submitted that the complaint informed that accused 2, 3, 5 and 6 were Directors engaged in the day-to-day affairs and administration of first accused company and that cheques could not have been issued without their knowledge. Such complaint allegation, pre-trial, had to be taken as true. Proviso to Section 141 informed that a Director charged could avoid liability by establishing that allegations made against him were not true. Learned counsel placed reliance on decision of Apex Court in ***Rallis India Ltd. v. Poduru Vidya Bhusan and others* [CDJ 2011 SC 413]**, particularly, the following observations therein:

“11. Thus, in the light of the aforesaid averments as found by us in the Criminal Complaint, we are of the considered opinion that sufficient averments have been made against the Respondents that they were the partners of the firm, at the relevant point of time and were looking after day to day affairs of the partnership firm. This averment has been specifically mentioned by the Appellant in the complaint even though denied by the Respondents but the burden of proof that at the relevant point of time they were not the partners, lies specifically on them. This onus is required to be discharged by them by leading evidence and unless it is so proved, in accordance with law, in our opinion, they cannot be discharged of their liability. Consequently, High Court committed an error in discharging them. Also, at the cost of repetition, by virtue of their own submissions before the High Court (reproduced in Para 6 above), the Respondents have admitted the fact that the Appellant had referred to them in their capacity as partners who were incharge of the affairs of the firm in the initial complaints. The question as to whether or not they were partners in the firm as on 31.03.2004, is one of fact, which has to be established in trial. The initial burden by way of averment in the complaint has been made by the Appellant.”

9. Meeting the contention of learned counsel for petitioners on the termination of the contract by complainant disentitling the presentation of

cheques issued under the contract and resort to prosecution upon dishonour thereof being impermissible, learned counsel placed reliance on the judgment of Apex Court in **HMT Watches Ltd. v. M.a.Abida and another [Crl.A.No.471 of 2015]** wherein after referring to the judgment in **Rallis India Limited v. Poduru Vidya Bhushan and others [2011 (13) SCC 88]**, it was informed that 'in view of the law laid down by this Court as above, in the present case High Court exceeded its jurisdiction by giving its opinion on disputed questions of fact, before the trial Court.'

10. This Court has considered the rival submissions and perused the materials on record.

11. This Court is unable to accept submission of learned counsel for petitioners of the termination of the contract disentitling complainant to present for payment cheques issued thereunder. Termination of a contract and demand for dues owed thereunder are distinct matters, the latter primarily being an issue of fact. The decision in **National Small Industries Corporation Limited** relied upon by learned senior counsel for petitioners and that in **Rallis India Ltd. v. Poduru Vidya Bhushan and others [CDJ 2011 SC 413]** are of co-

ordinate Benches of the Supreme Court. This Court is bound to follow the judgment that is subsequent viz., ***Rallis India Ltd. v. Poduru Vidya Bhusan and others [CDJ 2011 SC 413]*** and hold in favour of complainant. It is for petitioners to make out a case under proviso to Section 141 of the Negotiable Instruments Act. This Court would respectfully follow judgment in ***Rallis India Ltd.'s*** case also for the reason that occasion hardly may arise for the drawee of cheque to know internal workings of an accused company to such extent as would enable him to inform particulars of the role played by particular accused. In closing, this Court may add that fourth accused as the signatory of the cheque would have to answer the charge for commission of offence u/s.138 of the Negotiable Instruments Act even as per the decision in ***National Small Industries Corporation Limited*** case. As regards the claim of third accused of not having been a Director of first accused company at the time of commission of offence, this Court would leave it open to such accused to move afresh by producing documents of sterling quality in the form of proof of resignation from Directorship as also proof of non-induction thereof subsequently and up to date of commission of offence under due certificates obtained from Registrar of Companies.

The Criminal Original Petitions shall stand dismissed. Considering that the cases are of the years 2011 and 2012, this Court directs learned XVIII Metropolitan Magistrate, Saidapet, Chennai, to dispose of C.C.Nos.4544, 6094, 5914 of 2011, 1115, 1161, 1063 and 491 of 2012 as expeditiously as possible, preferably, within a period of three months from the date of receipt of this order. Connected miscellaneous petitions are closed.

03.08.2017

Index:yes/no
Internet:yes

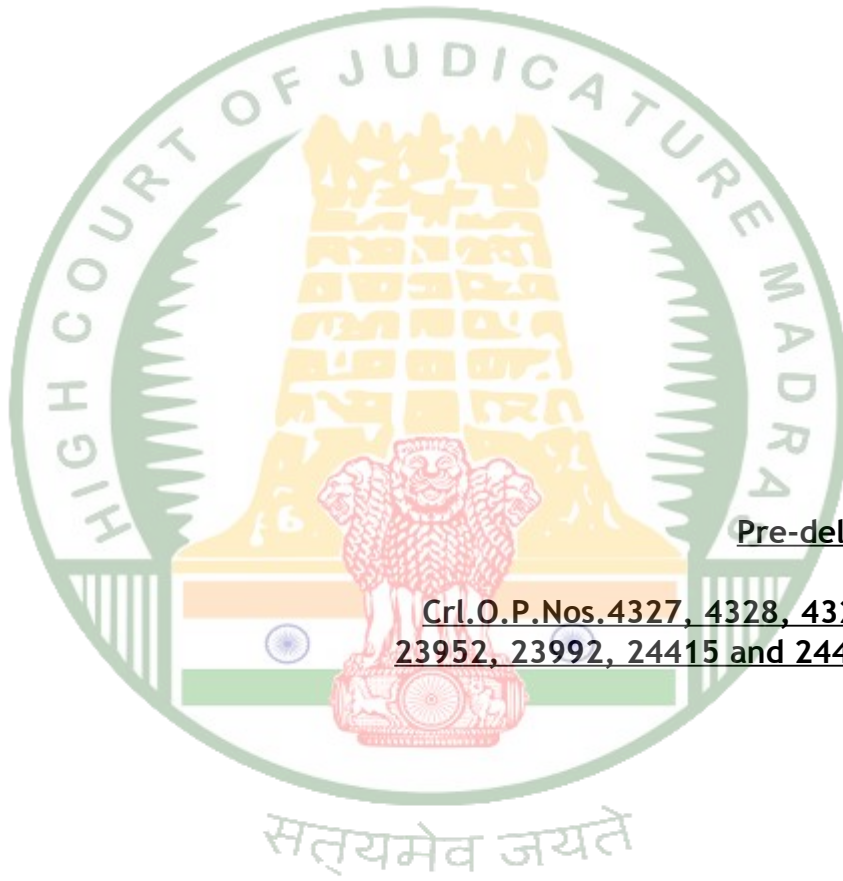
To
The XVIII Metropolitan Magistrate,
Saidapet, Chennai.



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C.T.SELVAM, J

gm

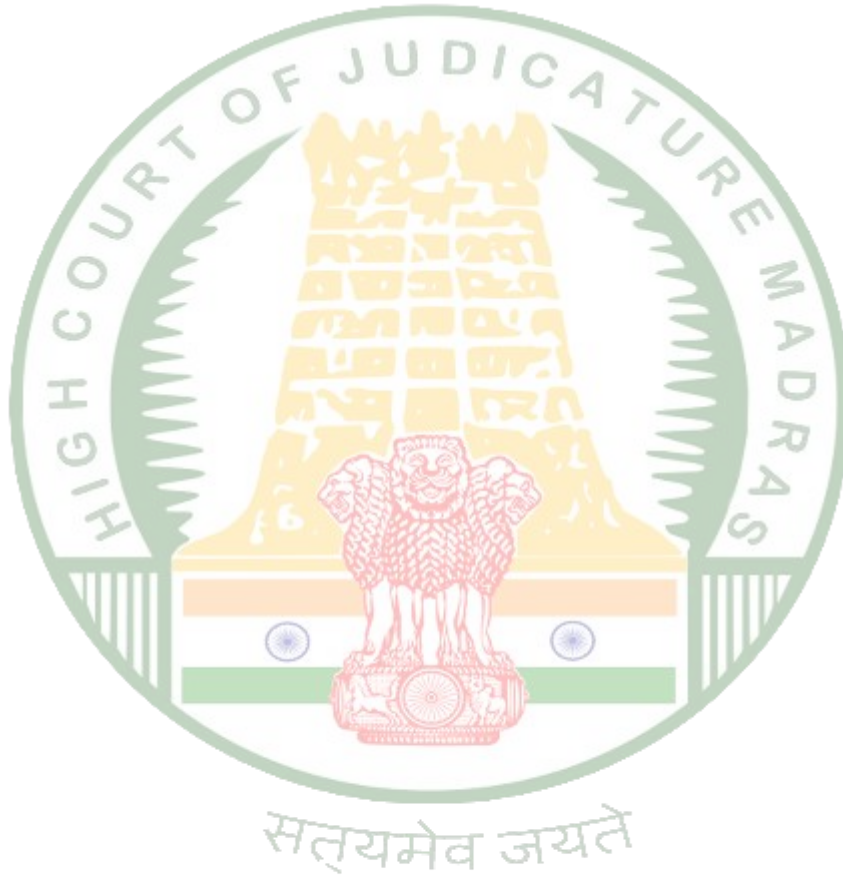


Pre-delivery order
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