IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.6.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.Nos.27302 and 27303 of 2011
and
M.P.Nos.1,1,2 and 2 of 2011

1. Deepak Rajendran
2. Valsala Rajendran
3. Rakhi Deepak .. Petitioners in both Crl.OPs.

vs

M.M.Traders
No.36, Sriperumbathur High Road
Manavalan Nagar
Thiruvallur - 602 002
rep. By its Proprietor, Munirathinam .. Respondent in CrlOP.27302/2011

Sri Murugan Enterprises
No.38, Anbalazhan Street
Manali, Chennai - 600 068
rep. By its POA Holder, D.Thangaraj .. Respondent in CrlOP.27303/2011

Common Prayer: Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure to call for the records pertaining to Calendar Case Nos.4176 and 4177 of 2011 on the file of the II Metropolitan Magistrate Court, Egmore, Chennai, and quash the same insofar as the petitioners are concerned.

For Petitioners : Mr.K.Srinivasan

For Respondents : No Appearance

COMMON ORDER

The petitioners have filed these criminal original petitions under Section 482 of Code of Criminal Procedure to call for the records pertaining to Calendar Case Nos.4176 and 4177 of 2011 on the file of the learned II Metropolitan Magistrate Court, Egmore, Chennai, and quash the same insofar as the petitioners are concerned.

2. The facts in a nutshell are as under: The petitioners are accused 2 to 4 in both the cases and the respondents are the complainants. The respondents have filed complaints under Section 138 of the Negotiable Instruments Act against M/s.ACE Concrete Private Limited (first accused) and nine others before the learned II Metropolitan Magistrate, Egmore, Chennai.

3. It is the case of the petitioners that the first petitioner had resigned from the post of Managing Director of the first accused company on 01.06.2010 and continued as Non-Executive Director along with petitioners 2 and 3 and thereafter, on 16.11.2010, all the petitioners have resigned even from the Non-Executive Directorship of the first accused company.

4. It is further stated that the first accused company exists even as on date and the present management is administered by accused 8 to 10 and all the disputed cheques dated 23.12.2010, 27.12.2010 and 31.12.2010 (in Crl.O.P.No.27302 of 2011) and dated 23.12.2010 and 30.12.2010 (in Crl.O.P.No.27303 of 2011) had apparently been issued by accused 8 to 10 jointly, much after the resignation of petitioners herein from directorship.

5. It is pleaded that the petitioners had neither issued the cheques in question nor were they Directors of the first accused company on the date of issuance of the said cheques and moreover, they were not involved in the day to day affairs of the company on the date of issuance of the cheques and hence, the complaint is not maintainable as against them and the learned II Metropolitan Magistrate, Egmore, Chennai, ought not to have issued summons to the petitioners.

6. I heard Mr.K.Srinivasan, learned counsel appearing on behalf of the petitioners and perused the documents available on record.

7. A bare perusal of the documents annexed in the typed set of papers shows that the first accused company had accepted the resignation of the petitioners herein in the board meeting held on 16.11.2010 and it is also seen from the communication dated 16.10.2010 of the first accused company that "from the date of resolution you would have no authority or responsibility as a director of the company".

8. Even Form 32 furnished by the petitioners shows that the petitioners had resigned with effect from 16.11.2010 from the first accused company. As per Form 32, which document is available in public domain and which has not been disputed by the respondent complainants by filing counter affidavit, there is no gainsaying that the petitioners were not the Directors of the company on the date of the issuance of cheques.

9. It is not even the case of the complainants that the dishonoured cheques were issued by the petitioners herein. These facts leave no manner of doubt that on the date the offence was committed by the first accused company, the petitioners were not the Directors and they had nothing to do with the affairs of the first accused company.

10. In my firm view, there is sufficient evidence to indicate that the petitioners had already resigned and were no longer Directors of the first accused company when the cheques in question were issued and, therefore, they cannot be made liable under the provisions of Section 138 of the Negotiable Instruments Act.

11. For the foregoing reasons, these criminal original petitions are allowed. The complaints qua the petitioners are quashed. The processes which are issued qua the petitioners are set aside. The Court below is directed to dispose of C.C.Nos.4176 and 4177 of 2011 in respect of other accused within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The II Metropolitan Magistrate,
Egmore, Chennai.

2.The Section Officer,
Criminal Section,
High Court, Chennai-104.

+4cc to Mr.K.Srinivasan, Advocate Sr.45096 & 45097

Crl.O.P.Nos.27302 and 27303 of 2011 and
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srg 26/10/2018