

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2017

CORAM

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

CRL.O.P.No.5956 of 2010
and
M.P.No.1 of 2010

R.Prabaharan
Partner, UC Software Solutions
Perayur, Salangapalayam
Kavindapadi, Erode District. ... Petitioner

Vs

S.P.Netview
rep. By its Partner-cum-Power Agent
P.Elangovan
Kuchipalayam Post, Thiruchengode Taluk
Friends Complex, Opp. To KSR Institutions
Namakkal District. ... Respondent

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records pertaining to the case in C.C.No.205 of 2009 on the file of the Judicial Magistrate III, Erode and quash the same.

For Petitioner : Mr.I.C.Vasudevan

For Respondent : No Appearance

ORDER

The petitioner has filed this original petition under Section 482 of the Criminal Procedure Code to quash the proceedings pending in C.C.No.205 of 2009 on the file of the learned Judicial Magistrate III, Erode.

2. The facts in a nutshell are as under: It is the case of the petitioner that the respondent had filed a complaint against the petitioner and four others for the alleged offence under Section 138 read with Section 142 of the Negotiable

Instruments Act on the allegation that the petitioner is a partner in one M/s.UC Software Solutions and was incharge of the day to day affairs of the firm.

3. It is the case of the respondent complainant that the first accused firm had to pay a sum of Rs.1,75,000/- to the respondent complainant and to discharge the said liability the second accused had issued a post dated cheque for the balance amount of Rs.1,75,000/- to the respondent drawn on Karur Vysya Bank Limited, Kavindapadi. The respondent presented the cheque for collection on 3.6.2008 and the same was returned on the same day with endorsement "insufficient funds".

4. It is stated that, thereafter, the respondent complainant issued a statutory notice on 2.7.2008, but the same was never served on the petitioner within one month from the date of dishonour. However, the complaint was taken on file by the learned Judicial Magistrate III, Erode, in C.C.No.205 of 2009.

5. In such backdrop, the present criminal original petition is filed for the relief stated supra.

6. It is the contention of the learned counsel appearing for the petitioner that the petitioner was only a sleeping partner of the firm and had no role to play in the day to day affairs of the firm.

7. It is further contended that even though the cheque was dishonoured on 3.6.2008, the notice was alleged to be sent by the respondent only on 14.7.2008, i.e., beyond the statutory period of one month, and, therefore, the complaint is not maintainable.

8. There is no representation on behalf of the respondent and no counter affidavit has been filed till date.

9. I heard Mr.I.C.Vasudevan, learned counsel for the petitioner and perused the documents available on record.

10. Section 141 of the Negotiable Instruments Act reads as under :-

"Section 141. Offences by companies -

(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committing, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against

and punished accordingly.

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part, any director, manager secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

11. From a perusal of the above, it would be clear that only that person who at the time when the offence was committed, was incharge of and was responsible to the company for the conduct of the business of the company as well as company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Section 141 of the Act does not refer to each and every partner of the firm. The offence is confined only to the person incharge of and responsible to the company for the conduct of the business of the company. If the intention was to make every director or partner of a company or the firm liable under Section 141 of the said Act then there was no need to say that every person who at the time when the offence was committed was incharge and was responsible to the company for the conduct of the business of the company as well as the company would be deemed to be guilty of the offence. On the other hand, it could have been said that each and every director or partner of the company/firm shall be guilty of the offence and shall be liable to be proceeded against.

12. That apart, in the case on hand, it is amply clear from the complaint itself that the the petitioner herein has not been served with the statutory notice.

13. There is also nothing on record to show that the petitioner was managing the affairs of the business or he was concerned with the business in any manner.

14. Unfortunately, the learned Magistrate has also issued process in a mechanical manner without verifying the facts

properly, more particularly as to whether the notice was at all served on the petitioner herein. Filing of such complaint is, therefore, nothing but abuse process of law.

15. Considering the aforesaid aspect of the matter, complaint of the complainant is required to be quashed insofar as the petitioner herein is concerned by exercising powers under Section 482 of the Criminal Procedure Code.

In the result, the original petition is allowed and the proceedings pending in C.C.No.205 of 2009 on the file of the Judicial Magistrate III, Erode, are quashed insofar as the petitioner herein is concerned. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate III, Erode.

+1cc to Mr.R.Nalliyappan, Advocate SR.No.15906

CRL.OP.No.5956 of 2010 and
M.P.No.1 of 2010

GMV (02/11/2018)

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