IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.08.2017

Coram

The Honourable Mr.Justice M.SUNDAR

Crl.OP.No.177 of 2014
and
M.P.Nos.1 & 2 of 2014

R.Sukumar ...Petitioner

-vs-

M/s.Canbank Factors Limited,
United India Building,
Second Floor, Western Wing,
1028, Avanashi Road,
Coimbatore – 641 018
represented by its Senior Vice President
and Branch in charge Mr.R.Sadasivam. ...Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. calling for the records in C.C.No.118 of 2013 on the file of Judicial Magistrate No.III, Coimbatore and to quash the same.

For Petitioner : No Appearance

For Respondent : No Appearance

ORDER

This Criminal Original Petition before me being Crl.O.P.No.177 of 2014 has been filed with a prayer to quash a criminal complaint being

Calender Case No.118 of 2013 (C.C.No.118 of 2013) on the file of the Judicial Magistrate No.III, Coimbatore.

2. Today when the matter was called, there is no representation on both sides.

3. Considering the nature of the matter and also considering the fact that the Crl.O.P. is of the year 2014 and the criminal complaint that has been sought to be quashed is of the year 2013, I am of the considered view that this matter can be disposed of on merits on the basis of the available records as adjourning such matters merely because counsel concerned have not appeared only leads to avoidable pendency and become avoidable additions to arrears in Court.

4. The petitioner before me viz., R.Sukumar, Son of K.K.Ramalingam is accused No.4 before the trial court. The sole respondent before me, a company which goes by the name Canbank Factors Limited is the complainant before the trial court.

5. For the sake of clarity and convenience, the parties are referred to by their respective ranks before the trial court.

6. Records before me reveal that the complainant company has filed a private complaint under Section 200 of the Code of Criminal Procedure, 1973 (Act 2 of 1974) (hereinafter referred to as *"Cr.P.C."* for brevity) alleging offences under Sections 138, 141 and 142 of the Negotiable instruments Act, 1981 (Act 26 of 1881) (hereinafter referred to as "NI Act" for brevity).

7. A perusal of the complaint that has been sought to be quashed by accused No.4 reveals that a company by name Sri Anba Garments Private Limited (hereinafter referred to as *"borrower company"* for the sake of brevity, clarity and convenience) has availed financial assistance from the complainant for its business. The account was not performing well. Under such circumstances, it is the case of the complainant that the aforesaid borrower company issued a cheque bearing No.418125 dated 10.10.2012 for a sum of Rs.1,48,82,160/- (Rupees One Crore Forty Eight Lakhs Eighty Two Thousand One Hundred and Sixty only) drawn on Tamilnadu Mercantile Bank Limited, 260, Eswaran Kovil Street, Erode in

favour of the complainant (hereinafter referred to as *"said cheque"* for brevity, clarity and convenience). It is the further case of the complainant that the said cheque when presented for collection through complainant's banker being Canara Bank, Trichy Road, Coimbatore on 22.11.2012was returned unpaid with banker's endorsement 'funds insufficient' vide a return memo dated 23.11.2012.

8. The aforesaid criminal complaint alleging offences under Sections 138, 141 and 142 of NI Act has been launched on the basis of dishonour of the said cheque.

9. Accused No.4 alone has moved this Court by way of this Crl.O.P. with a prayer to quash the criminal complaint and therefore, the prayer is construed as far quashing of complaint as against him alone. Quash petition is predicated primarily on the ground that on the date of dishonour of the said cheque, accused No.4 ceased to be a Director of the borrower company.

10. In support of this plea, accused No.4 has also enclosed Form 32 from the Registrar of Companies (hereinafter referred to as "RoC" for

brevity) as part of the typed set of papers. It is seen that Form 32 placed before this Court was downloaded from the official website of the jurisdictional RoC.

11. As would be evident from the facts alluded to supra, though the dishonoured cheque is dated 10.10.2012, the same was presented for clearance only on 22.11.2012 and the actual dishonour was on 23.11.2012. Therefore, on the date on which the cheque was presented and on the date of dishonour i.e., 22.11.2012 and 23.11.2012, accused No.4 was not a Director of the borrower company, as accused No.4 ceased to be a Director of the borrower company on and with effect from 10.11.2012.

12. As would be evident from a perusal of the uncontroverted averments in the complaint before the trial court, the cheque in question which was dishonoured was not signed by accused No.4. Most importantly, the uncontroverted averments in the complaint reveal that when the borrower company availed financial assistance from the complainant, only accused Nos.2 and 3 viz., Mr.Adhithan, Son of S.Saminatha Pillai and Mr.P.Velumai, Son of late Sri Palanisamy were the

Directors in the borrower company. There is a specific averment in the complaint that accused Nos.4 to 6 were inducted as additional Directors without the knowledge, consent and information of the complainant. I deem it appropriate to extract paragraph 2 of the complaint, which reads as under:

> *"2.The Complainant submits that Accused No.1 is a Private Limited Company. Accused Nos.2 and 3 are the original directors of Accused No.1. Accused Nos.4 to 6 were inducted as additional directors without the knowledge, consent and information of the complainant."*

13. Therefore, even according to the uncontroverted averments in the complaint, accused No.4 was not on the Board of the borrower company when the financial assistance was sanctioned and availed by the borrower company. Moreover, as set out supra, accused No.4 had resigned from the Board (as Director of the borrower company) on and with effect from 10.11.2012. The presentation and dishonour of the cheque was thereafter on 22.11.2012 and on 23.11.2012 respectively.

14. Further more, a perusal of the complaint reveals that there is a faint averment that accused Nos.3 to 6 have got direct knowledge of issuance of the said cheque and only under the instructions of the accused, accused No.2 issued the said cheque for and on behalf of accused No.1, borrower company.

15. Other than above, there is no specific averment qua accused No.4 in the complaint.

16. Further more, in a plethora of authorities on interpretation of various provisions of NI Act, this Court and the Hon'ble Supreme Court have repeatedly held that even if there are averments in a criminal complaint to the effect that some individuals were incharge of and responsible to day-to-day affairs a company, it is of no avail and would be mere adverbatim repetition of the language of the provision of law in the complaint, will not make the individual liable for prosecution without particular actions of the individual are not adverted to specifically setting out as to how the said individual is responsible to and incharge of the day-to-day affairs of the company which issued the cheque. In any

event, even those averments are lacking in the complaint in the instant case.

17. As stated supra, the only averment which could be traced (not even a direct reference) to accused No.4 is the averment that accused Nos.3 to 6 have got direct knowledge of issuance of the said cheque. Owing to all that have been alluded to supra, I deem it appropriate to extract that portion of paragraph 6 of the complaint and the same reads as follows:

> *"6. .... Accused Nos.3 to 6 have got direct knowledge of issuance of the said cheque and only under the instructions of the accused, Accused No.2 issued the said cheque for and on behalf of No.1 of the accused. ...."*

18. With regard to Form 32 from the jurisdictional RoC, it is clear that a photo copy of Form 32 as downloaded from the official website of RoC has been enclosed in the typed set of papers.

19. This being an official document downloaded from the official website of the RoC, there is no reason to disbelieve the same. Moreover, as alluded to supra, the complainant company itself has averred in the complaint that accused No.4 was inducted as additional Director without its knowledge and there was not a Director in the borrower company at the time of the transaction i.e., the financial assistance being sanctioned and being availed.

20. Owing to all that have been alluded to supra, I am of the considered opinion that even on an uncontroverted reading of the complaint, no offence is made out against accused No.4, who is the petitioner before me.

21. Resultantly, the complaint being C.C.No.118 of 2013 on the file of the Judicial Magistrate No.III, Coimbatore is quashed with regard to accused No.4 alone i.e., R.Sukumar, Son of Ramalingam, residing at Door No.6A, Thiru Vee Ka Nagar, 3rd Street, College, Road, Tirupur – 641 603 and this Crl.O.P. is allowed. Consequently, M.P.Nos.1 and 2 of 2014 are closed.

22. Though obvious, it is made clear that the trial court can proceed with the complaint with regard to/against the other accused.

03.08.2017

Index : Yes/No
Internet : Yes/No
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M.SUNDAR, J.

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Order in
Crl.O.P.No.177 of 2014

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