

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.O.P.Nos.21042 and 21084 of 2012

and

M.P.Nos.1, 1, 2 and 2 of 2012

K.Vijay Sekar

S/o.K.Jayasekhar

..Petitioner in Crl.O.P.No.21042/2012

G.Hari Priya

W/o.K.Vijay Sekar

..Petitioner in Crl.O.P.No.21084/2012

Vs.

Mathrubhumi Printing and Publishing Co. Ltd.,

represented by its Authorized Officer/

Unit Manager - Mr.V.Gopakumar,

M.J.Krishnamohan Memorial Building,

K.P.Kesava Menon Road,

Kozhikode - 673 001.

.. Respondent in both petitions

Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code praying to call for records in C.C.No.1802 of 2011 on the file of Fast Track Court II (Magistrate Level), Egmore, Chennai and quash the same as against the petitioners.

For Petitioners : Mr.Gurmeet Kour
for M/s.R and P Partners

For Respondent : Mr.S.Deepa Hari Govind

COMMON ORDER

Petitioners seek quash of proceedings in C.C.No.1802 of 2011 on the file of Fast Track Court II (Magistrate Level), Egmore, Chennai.

2. C.C.No.1802 of 2011 on the file of Fast Track Court II (Magistrate Level), Egmore, Chennai, is an action moved by respondent alleging commission of offence u/s.138 of the Negotiable Instruments Act.

3. Heard learned counsel for petitioners and learned counsel for respondent.

4. Learned counsel for petitioners submits that no statutory notice u/s.138 of the Negotiable Instruments Act has been issued to petitioners and hence prosecution case fails. The first accused company has been duly served. The submission is unacceptable inasmuch as once a Company fails to effect payment within the prescribed period after receipt of statutory notice u/s.138 of the Negotiable Instruments Act, the offence is deemed to have been committed and the vicarious liability of those in charge of and responsible to it in the conduct of its affairs arises regardless of whether notice was served on them or not.

5. The next submission of learned counsel is that the specific role played by petitioners in the first accused company has not been spelt out in the complaint. Paragraph No.2 of the complaint reads as follows:

'2. The 1st Accused is a Private Limited Company having its Registered Office at Old No.16, Thirumurthy Nagar Main Road, Nungambakkam, Chennai - 34 and Corporate Office at Old No.4, New No.16, Sterling Avenue, Chennai - 600 034 represented by its CMD Mr.Vijayasekhar. The second accused is the Chairman and Managing Director of the first accused Company and the third accused is its Director. The second and third accused are in-charge and responsible for the day-to-day affairs and functions of the company. The authorized officer of the Complainant and other officers of the Complainant Company who are dealing with the accused company in the course of business with them are personally aware that the accused numbers 2 and 3 are in-charge of responsible for the day-to-day affairs of the company.'

The address for service of summons and processes on the Accused is same as above. Summons may be served on the Accused to their Corporate Office and in the case of the accused 2 and 3 at their residence address if it becomes necessary as such.'

6. This Court is of the view that the requirement of allegations regarding the Directors/persons in charge of and responsible for the affairs of the

company informed in *SMS Pharmaceuticals v. Neeta Bhalla and another*, 2005 (5) CTC 65: 2005(4) Crimes 34 stands met. The further submission of learned counsel for petitioners is that the complaint merely informs that both cheques dated 31.10.2010 have been duly signed and executed by the Director of the first accused company without informing who the Director was. This Court does not consider the submission material enough to call for an answer.

Finding no merits, the Criminal Original Petitions are dismissed. Considering the position that the case is of the year 2011, this Court directs the Court below to dispose of C.C.No.1802 of 2011 as expeditiously as possible, in any event, not later than three months from the date of receipt of this order. Connected miscellaneous petitions are closed.

28.03.2017

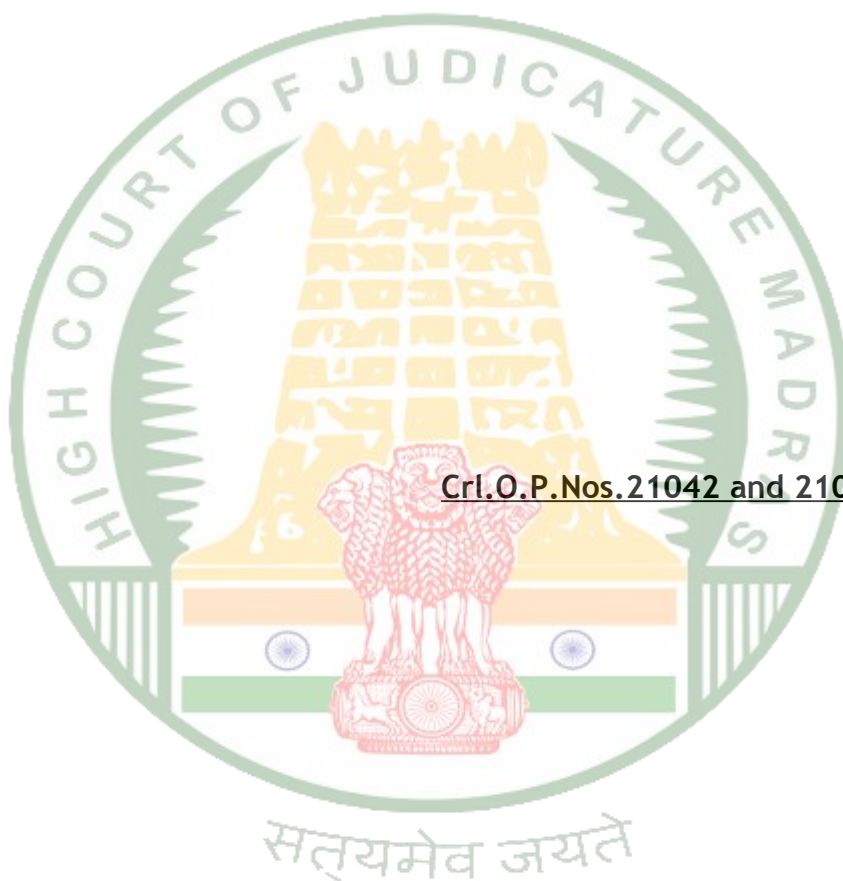
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To
The Fast Track Court II (Magistrate Level),
Egmore, Chennai.

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C.T.SELVAM, J

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