

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.04.2017

CORAM

The Hon'ble Mr.Justice M.V.MURALIDARAN

Crl.O.P.No.6085 of 2011
and
M.P.No.1and 2 of 2011

P.K.Muyeenuddin

... Petitioner

Vs.

Pos-Hyundai Street Mfg.(1) Pvt. Ltd.,
BBNC Plaza, 5 Ground Floor,
178/180, North Usman Road,
T.Nagar, Chennai-600 017.
Rep. By its Senior Executive - Sales and duly
constituted Power of Attorney Holder
Mr.P.Parthasarathy

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of
Criminal Procedure Code, to call for records in C.C.No.903 of
2010, on the file of the XIV Metropolitan Magistrate, Egmore,
Chennai, quash the proceedings.

For Petitioner : M/s.C.S.Dhanasekaran

For Respondent : No Appearance

ORDER

This petition has been filed to call for records in
C.C.No.903 of 2010 on the file of the learned XIV Metropolitan
Magistrate, Egmore, Chennai and quash the proceedings.

2. Heard Mr.C.S.Dhanasekaran, learned counsel appearing for
the petitioner and perused the materials available on records.

3. The criminal original petition is covered the decision
of the Hon'ble Supreme Court in S.M.S.Pharmaceuticals Ltd., v.
Neeta Bhalla and Another reported in [(2005) 8 Supreme Court
Cases 89] wherein it is held in paragraph No.8, which reads as
follows:-

" 8. The relevant provisions of the companies Act show that there is nothing which suggests that simply by being a director in an company, one is supposed to discharge particular functions on behalf of a company. The role of a director in a company is a question of fact depending on the peculiar facts in each case. There is no universal rule that a director of a company is in charge of its everyday affairs. There is no magic as such in a particular word, be it director, manager or secretary. It all depends upon the respective roles assigned to the officers in a company."

4. The counsel for the petitioner has produced the judgment rendered by the Hon'ble Supreme court, wherein paragraph No.19 is held as follows:

19. In view of the above discussion, our answers to the questions posed in the reference are as under:

(a) It is necessary to specifically aver in a complaint under section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of section 141 cannot be said to be satisfied.

(b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in the affirmative. The question notes that the managing director or joint managing director would be admittedly in charge of the company and responsible to the positions in a company become liable under section 141 of the Act. By virtue of the office they hold as managing director or joint managing director, these persons are in charge of

and responsible for the conduct of business of the company. Therefore, they get covered under section 141. So far as the signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."

5. As per the order of the Hon'ble Supreme Court, it is necessary to specifically aver in a complaint under Section 141 of the Negotiable Instruments Act, 1881 that at the time of the offence, the petitioner was in charge of, and was responsible for the conduct of the business of the company. The averment is an expeditiously section 141 of the Act has to be made in the complaint without this averment made in the complaint requirement under section 141 has to be set aside. The said proposition the orders of this Court has squarely applicable in this case.

6. Since there was no averment made by the complainant, which is required under section 141 of the Act in this case against this petitioner, who is the A-3 in this case, the complaint is liable to be set aside in respect of petitioner/Accused No.3.

7. With the above observations, the Criminal Original Petition is allowed and the case in C.C.No.903 of 2010, on the file of the XIV Metropolitan Magistrate, Egmore, Chennai, in respect of petitioner/Accused No.3 is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

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To

The learned XIV Metropolitan Magistrate,
Egmore, Chennai.
(Now functioning at Allikulam Commercial Centre,
Park Town, Chennai)

+1cc to M/s.C.S.Dhanasekaran, Advocate, S.R.No.24319
Crl.O.P.No.6085 of 2011

CA(19/06/2017)