

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2017

C O R A M

THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

Cr1.O.P.No.19349 of 2010

and

MP.1 of 2010

David Maharajan

...Petitioner

Vs.

M/s.Essar Steel & Alloy
Rep. by its Manager
Mr.Subramaniam

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.18 of 2010 pending on the file of the Hon'ble Judicial Magistrate II Coimbatore and quash the same.

For Petitioner : Mr.R.Ganesh Kumar

For Respondent : No Appearance

O R D E R

This criminal original petition has been filed to call for the records in C.C.No.18 of 2010 on the file of the Judicial Magistrate II, Coimbatore and quash the same.

2. Heard the learned counsel appearing for the petitioner.

3. The petitioner herein is the 3rd accused in C.C.No.18 of 2010 on the file of the Judicial Magistrate No.2, Coimbatore. It is a private complaint for the offence punishable under Section 138 of the Negotiable Instruments Act filed by M/s.Essar Steel & Alloy, rep. by its Manager, the respondent herein.

4. It is alleged in the complaint that the 1st accused namely M/s.D.D.M. Industries is a partnership firm. The 2nd accused Kristober is the managing partner and the 3rd accused / the petitioner herein is the partner of the said firm. It is alleged that the firm had issued two cheques, drawn on Bank of India, Coimbatore, bearing No.315014 dated 29.06.2009 for Rs.1,29,447/- and bearing No.315015 dated 09.07.2009 for Rs.2,60,000/-. When the cheques were presented by the respondent for collection twice, they were dis-honoured citing "FUNDS

INSUFFICIENT". Thereafter, legal notice was issued calling upon the accused to pay the amount. The notices were received by Accused No.1 and Accused No.3. Notice issued to the 2nd accused was returned as "Not Claimed". Hence the complainant preferred the complaint under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate No.2, Coimbatore.

5. The Judicial Magistrate No.2, Coimbatore took the complaint on file and issued summons. After the receipt of the summons, the 3rd accused / petitioner herein preferred the present petition under Section 482 of Cr.P.C before this Court.

6. The learned counsel appearing for the petitioner submitted that the petitioner is only a dormant partner and he was not responsible for the conduct of the business of the firm. He further submitted that the Judicial Magistrate No.2, Coimbatore was not justified in taking the matter on file and issuing summons to the petitioner. According to him, the averments in the complaint have not satisfied the necessary ingredients to attract Section 141 of the Negotiable Instrument Act, insofar as the petitioner is concerned.

7. In this connection, the learned counsel appearing for the petitioner relied upon the judgement of Supreme Court in National Small Industries Corporation Limited -vs- Harmeet Singh Paintal and another [(2010) 3 SCC 330], wherein it is stated :

"the complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused company for conduct of its business - Mere bald statement that he was in charge of and was responsible to the company for conduct of its business not sufficient".

8. Keeping in mind the above dictum of the Supreme Court, we have to examine the complaint. A close reading of the complaint would reveal that the cheques were issued on behalf of the firm only by the 2nd accused and as far as the petitioner is concerned, it is stated that he is a partner. There is no averment in the complaint to show that at the time the offence was committed, the petitioner was in-charge of and responsible to the firm for the conduct of the business of the firm. The complaint did not spell out as to how and in what manner the petitioner was in-charge of or was responsible to the 1st accused for the conduct of its business. As been laid down by the Supreme Court, the person sought to be made liable should be in-charge of and responsible for the conduct of the business of the firm at the relevant time. In the absence of specific averment as to the role of the petitioner herein, it cannot be said that the complaint discloses an offence as against this petitioner. Hence, I am inclined to allow this petition.

Accordingly, the proceedings in C.C.No.18 of 2010 pending on the file of the Judicial Magistrate No.2, Coimbatore as far as this petitioner is concerned, is hereby quashed. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CCC)

//True Copy//

Sub-Assistant Registrar

To
The Judicial Magistrate No.2, Coimbatore.

Crl.O.P.No.19349 of 2010

MP (CO)
sp/14/2



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