



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:22.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P.(MD)Nos.11468 & 11510 of 2014

and

Crl.M.P(MD)Nos. 1 & 2 of 2014 & 4326 of 2017

J.Jeyakumar

... Petitioner
in both petitions

-Vs-

R.Selvaraj

... Respondent
in both petitions

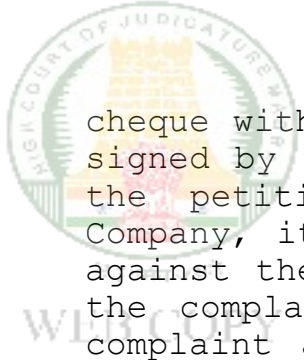
COMMON PRAYER: Criminal Original petitions are filed under Section 482 of Criminal Procedure Code, to call for the records relating to the impugned proceedings in S.T.C.Nos.274 of 2013 & 354 of 2013 pending on the file of learned Judicial Magistrate, Alangudi and quash the same.

For Petitioner	: Mr.N.Dilip Kumar in both petitions
For Respondent	: Mr.J.Ranjani Devi in both petitions

C O M M O N O R D E R

This Criminal Original petitions are filed to quash a private complaint in S.T.C.Nos.274 of 2013 & 354 of 2013 on the file of learned Judicial Magistrate, Alangudi. The respondent has instituted the private complaint under Section 200 of the Code of Criminal Procedure against the petitioner alleging an offence under Section 138 r/w 141 of the Negotiable Instruments Act.

2.The petitions have been filed for quashing the complaint in S.T.C.Nos.274 of 2013 & 354 of 2013 pending before the learned Judicial Magistrate, Alangudi. It is the contention of the petitioner that the cheques were neither issued by him nor belonging to the petitioner. Since he is not the drawer of the cheques, the petitioner states that the complaint against the petitioner alone is not maintainable. The admitted facts in this case is that one M/s.Jeganathan & Company is a partnership firm and the petitioner's father by name, Mr.Jeganathan, was also a partner in the said firm. It is stated that Mr.Jeganathan, one of the partner of the partnership firm died on 07.05.2005. However, after the death of the respondent's father, the complaints have been lodged as against the petitioner/as sole accused. Since the petitioner's father died on 07.05.2005, it is stated the the complainant has misused the old



cheque with ulterior motive. The cheque was issued by the firm but signed by the partner. Though the legal notice was issued against the petitioner and the Managing Director of M/s.Jaganathan & Company, it is to be noted that the complaint has been lodged only against the petitioner. The company or the firm is not a party in the complaint. It is a settled position of law that a private complaint alleging an offence under Section 138 read with Section 141 of Negotiable Instrument Act is not maintainable against the individual alone in the absence of the company. It is to be noted that as per the explanation to Section 141 of Negotiable Instrument Act, Company includes a firm.

3.The learned counsel appearing for the petitioner relied upon the Judgment of Hon'ble Supreme Court in the case **Charanjit Pal Jindal vs L.N.Metalics** reported in (2015) 15 SCC 768, (2016) 3 SCC (Cri) 400 wherein the Hon'ble Supreme Court after referring to a larger Bench of Hon'ble Supreme Court, in the case of **Aneeta Hada Vs M/sGod father Travels and Tours Private Limited** reported in (2012) 5 SCC 661 has held as follows:

"10.In Aneeta Hada case the question that arose for determination by this Court was whether an authorised signatory of a company would be liable for prosecution under Section 138 of the Act without the company being arraigned as an accused. As there was a difference of opinion between the two learned Judges regarding the interpretation of Sections 138 and 141 of the Act reference was made tot he larger Bench of three Judges. In the said case, this Court notices the ratio laid down in C.V.Parekh case and the view expressed in Sheoratan Agarwal case while interpreting Sections 138 and 141 of the Act, this Court observed as follows: (Aneeta Hada case, SCC pp. 687 & 688, para 53 and 58-59)

"53. It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant.

58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words 'as well as the company' appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only



the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada is overruled with the qualifier as stated in para 51. The decision in Modi Distillery has to be treated to be restricted to its own facts as has been explained by us hereinabove."

11. From the aforesaid finding, we find that after analysing all the provisions and having noticed the different decisions rendered by this Court, the three-Judge Bench arrived at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning a company as an accused is imperative. Hence in this case, we find no reason to refer the matter to the larger Bench."

4. The legal position laid down by the Hon'ble Supreme Court above referred to is applicable in this case and the learned counsel for the respondent also agree with the proposition.

5. In the above circumstances, this Criminal Original Petitions are allowed and the proceeding in S.T.C.Nos.274 of 2013 & 354 of 2013 in the present form are quashed. Consequently, connected Miscellaneous Petitions are closed. It is open to the respondent to workout his remedy as suggested by Hon'ble Supreme Court in the case above referred to in para 13 of the Judgment.

Sd/-

Assistant Registrar (CRL. SIDE)

/True Copy/

Sub Assistant Registrar



To

The Judicial Magistrate,
Alangudi.

+2cc to Mr.C.DEEPAK Advocate in SR. No. 89300,89301

+1cc to Mr.N.DILIP KUMAR Advocate in SR. No. 88807

SSS

JS/MR.KKR/SAR.3/11.12.2017/4P-5C

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