BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2017

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Crl.O.P.(MD) No.5345 of 2017
and
Crl.M.P.(MD) Nos.3767 and 3768 of 2017

Kashap Vyas ... Petitioner / Accused-3

-Vs-

1. The Arasan Aluminium Industries Pvt. Ltd., Through its Power Agent Sridharan ... 1st Respondent/Complainant

2. M/s.Aluminium India represented Through its Managing Partner, Niranjan Vyas,

3.Suresh Kumar Vyas

4.Karthik Vyas ...2 to 4 Respondents/ Accused Nos.1, 2 & 4

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the proceedings in C.C.No.3 of 2017 on the file of the learned Judicial Magistrate at Sivakasi and quash the same.

For Petitioner	:	Mr.S.C.Herold Singh
For R1	:	Mr.N.Dilip Kumar

O R D E R

The Criminal Original Petition has been filed to quash the records pertaining to the proceedings in C.C.No.3 of 2017 on the file of the learned Judicial Magistrate, Sivakasi.

2.The petitioner is the third accused in C.C.No.3 of 2017, which was lodged by the first respondent for the offences punishable under Section 138 of Negotiable Instruments Act. The first respondent / complainant has given a complaint stating that the first and second respondents have entered into a contract for suppling Aluminium ingots during the month of December 2015 and for the same, amount was paid by the first respondent to the second respondent, by way of cheque for a sum of Rs.1,13,69,673/-

(Rupees One Crore Thirteen Lakh Sixty Nine Thousand Six Hundred and Seventy Three only). The cheque was, of course, handed over only by the first respondent to the second respondent. It is stated that the accused have failed to supply the goods and thereafter, the complaint was lodged by the first respondent after issuing notice and following the procedure.

3.The learned Counsel for the petitioner submitted that the petitioner is not a partner and that only his father Mr.Baijuvyas, was a partner in the partnership firm along with his brothers and that his father also died on 13.05.2015 and the petitioner cannot be held liable for the business dealings of the partnership firm. The learned Counsel for the petitioner has also produced Form-1, which is nothing but a Form issued under Rule 3 of A.P. Partnership (Registration of Firms) Rules, 1951. This Certificate was issued on 17.05.2002, which shows that the petitioner's father was also one of the partners. Similarly, the petitioner has also produced Registration Certificate, issued by Registrar of Firms. This Certificate was issued on 23.05.2002. These documents, which were obtained in the year 2002, would not show that the petitioner is not a partner, on the date when the offence was committed. It is also to be noted that the petitioner has not produced the partnership deed or the deed reconstituting the partnership firm, after the demise of his father. Without the partnership deed, it is not possible for this Court to ascertain how the petitioner can be treated as one unconnected with the partnership firm. With the available documents and the contentions of the learned Counsel for the petitioner that the petitioner is neither a Partner nor in-charge of any business transaction of the partnership firm, which is liable to pay the amount to the first respondent, this Court, having regard to the provisions of the Section 141 of Negotiable Instruments Act, is not inclined to accept the submission of the learned Counsel for the petitioner. Section 141 of Negotiable Instruments Act reads as follows:

> **141. Offences by companies**
> (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
>
> Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.
>
> (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act, has been committed

by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purpose of this section

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relating to a firm, means a partner in the firm.

4.From the reading of Section 141 of Negotiable Instruments Act, it is clear that every person who, at the time of commission of offence, was in charge of the company, responsible to the company, for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

5.In the present case, the complaint lodged by the first respondent clearly states that the accused Nos.3 and 4 are the partners of the firm and that they are in-charge of the day-to-day administration of the second respondent firm.

6. The learned Counsel for the first respondent relied upon a judgment of the Honourable Supreme Court in the case of Rallis India Limited vs Poduru Vidhya Bhushan and others reported in (2011) 13 SCC 88, wherein, the Honourable Supreme Court has held as follows:

> "....9. To analyze the case before us in proper perspective, it is necessary to scrutinize all the Criminal Complaints one by one. On perusal of the complaints, we observe that the specific averment of vicarious criminal liability as mandated by the three Judge Bench of this Court in the case of S.M.S. Pharmaceuticals Limited Vs. Neeta Bhalla and Another, reported in 2005 (8) SCC 89, is contained in them in the form mentioned in Para 4 hereinabove.
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> 10. Thus, in the light of the aforesaid averments as found by us in the Criminal Complaint, we are of the considered opinion that sufficient averments have been made against the Respondents that they were the partners of the firm, at the relevant point of time and were looking after day to day affairs of the partnership firm. This averment has been specifically mentioned by the

Appellant in the complaint even though denied by the Respondents but the burden of proof that at the relevant point of time they were not the partners, lies specifically on them. This onus is required to be discharged by them by leading evidence and unless it is so proved, in accordance with law, in our opinion, they cannot be discharged of their liability. Consequently, High Court committed an error in discharging them. Also, at the cost of repetition, by virtue of their own submissions before the High Court (reproduced in Para 6 above), the Respondents have admitted the fact that the Appellant had referred to them in their capacity as partners who were incharge of the affairs of the firm in the initial complaints. The question as to whether or not they were partners in the firm as on 31.03.2004, is one of fact, which has to be established in trial. The initial burden by way of averment in the complaint has been made by the Appellant....."

7.From the reading of the judgment above referred, it can be seen that the petitioner's liability under Section 141 of Negotiable Instruments Act can be prima facie inferred, so as to prosecute the petitioner. The judgment of the Honourable Supreme Court clearly stands in the way of the petitioner, to quash the criminal complaint only on the ground that he is not a partner of the firm or that he is not involved in the business. The contention of the petitioner cannot be decided on the basis of statement or some material which would not conclusively prove or establish, the case of the petitioner as regard the liability. In view of the above, this Court do not find any merits in this case and hence this Criminal Original Petition is dismissed.

8. The learned Counsel for the petitioner prays for dispensing with the presence of the petitioner, before the lower Court. Having regard to the fact that the petitioner, who claims that he has no role in the transaction and has not produced the relevant documents which are very much essential, this Court is prima facie of the view that the petitioner's case may not be true. The amount involved is large. In such circumstances, this Court is not inclined to entertain the plea of the learned Counsel for the petitioner to dispense with the presence. It is open to the petitioner to file appropriate petition before the lower Court to dispense with his appearance. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Sivakasi.

2. The Inspector of Police,
   Keezhathuval Police Station,
   Muthukulathur Taluk,
   Ramanathapuram District.

3. The Deputy Director of Health Service,
   Paramakudi,
   Ramanathapuram District.

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SDS/MR:KKR/SAR 2/24.10.2017/5P/4C