BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2017

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.1382 of 2013
and
M.P.(MD)Nos.1 and 3 of 2013

Naryanan, S/o.Narayanan ... Petitioner/Accused

Vs.

M.S.D. Dairy Firm,
Through its Proprietor,
M.S.D.C. Radha Ramanan,
S/o.MSD Chandrasekara Raja,
144, Vivekananda Road,
Cotton Market,
Rajapalayam,
Virudhunagar District,
Through his Power Agent,
M.Ramesh ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for records relating to the private complaint in S.T.C.No.75 of 2012 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level, Srivilliputhur, and quash the same.

For Petitioner : Mr.J.Sulthan Basha
for M/s.Ajmal Associates

For Respondent : Mr.P.Thiraviyam
for Mr.M.Karunanithi

O R D E R

This Criminal Original Petition has been filed by the petitioner seeking to quash the complaint filed by the respondent against him in S.T.C.No.75 of 2012 on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level, Srivilliputhur.

2.The brief facts of the case are as follows:

The respondent herein filed a complaint under Sections 138 and 142 of the Negotiable Instruments Act r/w. Section 200 Cr.P.C. against the petitioner alleging that he is the Proprietor of M.S.D. Dairy Firm and on 18.04.2012, the petitioner said to have approached the respondent for the purpose of purchasing cows. Accordingly, on 26.07.2012, the petitioner had taken possession of 50 cows for a sum of Rs.10,50,000/-. Thereafter, the petitioner paid a sum of Rs.3,50,000/- on various dates. When the respondent asked the remaining sale consideration, on 26.07.2012, the petitioner said to have given a post-dated cheque, bearing No.680342, dated 01.09.2012, drawn on Corporation Bank, CPBB Saritavihan Branch, New Delhi, for Rs.7,00,000/- in favour of the respondent. Thereafter, the respondent was informed to present the cheque to the Bank and collect the balance sale consideration. Accordingly, as per the instruction of the petitioner, the respondent had presented the said cheque to the Central Bank of India, Rajapalayam, and the same was returned with an endorsement as 'insufficient funds' vide Memo dated 04.09.2012 to the respondent's Bank and the same was informed to the respondent through his Bank on 06.09.2012. In order to follow the procedure established in the Negotiable Instruments Act, on 01.10.2012, the respondent issued a statutory notice to the petitioner and the petitioner has also received the same on 03.10.2012, but did not reply to the same. Hence, the respondent filed a complaint against the petitioner under Sections 138 and 142 of the Negotiable Instruments Act r/w. Section 200 Cr.P.C. before the Judicial Magistrate, Fast Track Court at Magisterial Level, Srivilliputhur. Against which, the present Criminal Original Petition has been filed.

3.The learned counsel for the petitioner submitted that though the alleged cheque was issued by the petitioner in the name of the firm, the respondent implicated the petitioner as accused without implicating the firm as one of the accused in the abovesaid complaint. Aggrieved by the said complaint preferred by the respondent, the petitioner has filed the present Criminal Original Petition.

4.In support of his submission, the learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in the case of **Aneeta Hada v. M/s.Godfather Travels & Tours Pvt. Ltd.**, reported in **AIR 2012 SCC 2795**, wherein at paragraphs 39, 42 and 43, it has been held as follows:

> ''39.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.

42. We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions and a penalty is not to be imposed affecting the rights of persons whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term "as well as" in the Section is of immense significance and, in its tentacle, it brings in the company as well as the director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the directors or other officers is tenable even if the company is not arraigned as an accused. The words "as well as" have to be understood in the context. In Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others [1987 (1) SCC 424] it has been laid down that the entire Statute must be first read as a whole, then section by section, clause by clause, phrase by phrase and word by word. The same principle has been reiterated in Deewan Singh and others v. Rajendra Prasad Ardevi and others [2007 (10) SCC 528] and Sarabjit Rick Singh v. Union of India [2008 (2) SCC 417]. 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.

43. 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 (AIR 1971 SC 447) (supra) which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal (AIR 1984 SC 1824) (supra) does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada (AIR 2000 SC 145 : 1999 AIR SCW 4228) (supra) is overruled with the qualifier as stated in paragraph 37. The decision in Modi Distilleries (AIR 1988 SC 1128) (supra) has to be treated to be restricted to its own facts as has been explained by us hereinabove.''

5.On a perusal of the abovesaid decision, it is seen that the Hon'ble Apex Court had categorically held that for maintaining the prosecution under Section 141 of the Negotiable Instruments Act, arraigning of a company as an accused is imperative and without arraigning the company as a party, the prosecution launched by the complainant, is bad in law.

6.The learned counsel for the respondent has also conceded the legal position laid down by the Hon'ble Apex Court.

7.Heard both sides.

8.A perusal of the cheque dated 01.09.2012, makes it clear that the petitioner admittedly issued the same on behalf of the firm. Hence, without impleading the said firm as an accused, the complaint is not maintainable.

9.Further, a perusal of the abovesaid decision cited supra, would indicate that the Hon'ble Apex Court has categorically held that for maintaining the prosecution under Section 141 of the Negotiable Instruments Act, arraigning of the company as an accused is imperative and without arraigning the company as an accused in the complaint, the complaint is not maintainable in the eye of law. The said decision is squarely applicable to the facts of the present case on hand.

10.In view of the above discussions and the decision cited supra, I am inclined to quash the proceedings in S.T.C.No.75 of 2012 pending on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level, Srivilliputhur. Accordingly, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.75 of 2012 pending against the petitioner before the Judicial Magistrate, Fast Track Court at Magisterial Level, Srivilliputhur, is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
   Fast Track Court at Magisterial Level,
   Srivilliputhur.

2. -do- through The Chief Judicial Magistrate,
   Virudhunagar.

+ 1 CC TO Mr.P.THIRAVIAM, ADVOCATE IN SR No. 92599
+ 1 CC TO M/s.AJMAL ASSOCIATES, ADVOCATE IN SR No. 92534

SMN2
TE/MR-KKR/SAR-4 : 26/12/2017 : 5P/5C

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