

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.07.2018
Pronounced on : 26.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.19361, 19362 & 4676 of 2011
and
M.P.Nos.1, 1, 1 & 2, 2, 2 of 2011

V.Sreedhar Reddy,
S/o.V.Balarami Reddy. ... Petitioner in all Crl.O.P.s'
/5th Accused

Vs.

The Water Base Limited,
No.22, Sadasivam Street,
Gopalapuram, Chennai-600 086.
Rep. by Authorized Signatory,
Mr.R.Chandramohan. ... Respondent in all Crl.O.P.s'
/Complainant

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.Nos.7768, 7769 & 9327 of 2010 on the file of the XVIII Metropolitan Magistrate Court at Saidapet, Chennai and quash the same.

For Petitioner : Mr.J.R.Balaji Balachandar
[in all Crl.O.P.Nos.]

For Respondent : Mr.S.A.Rajan
[in all Crl.O.P.Nos.]

* * * * *

COMMON ORDER

Crl.O.P.No.4676 of 2011 pertains to C.C.No.7768 of 2010, Crl.O.P.No.19361 of 2011 pertains to C.C.No.7769 of 2010 and Crl.O.P.No.19362 of 2011 pertains to C.C.No.9327 of 2010, which are pending on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai.

2.Since, the petitioner/accused and respondent/complainant are common and the issue involved are similar and hence, I proposed to dispose of all the three Criminal Original Petitions by a common order.

3.For the sake of convenience, the petitioner hereinafter referred as "Accused" and the respondent hereinafter referred as "Complainant" as found in the complaint.

4.The gist of the complaint is that the Complainant M/s.Waterbase Ltd., a Public Limited Company incorporated under the Companies Act is doing aquaculture business and manufacture prawn feeds in various brand names and selling the feeds to the parties as per their requirements. The accused is a Partnership firm doing aquaculture business in the name of M/s.SVR Sea Foods, the complainant appointed the accused firm as one of the dealers for the area of Nellore District, Andhra Pradesh for Prawn Feed Products. As per the requirements the accused purchased prawn feeds through various invoices from the respondent/complainant on credit basis from time to time, on assurance to pay the due amount in time. But the accused failed to pay the entire amount. As such for the above business transactions the accused was due of Rs.24,56,923/- (Rupees Twenty Four Lakh fifty six thousand nine hundred and twenty three only) as on 31.12.2009. In discharge of the said liability the accused had issued cheques, which were dishonoured for the reason "Funds Insufficient". Thereafter, complying with the statutory conditions, the respondent/complainant filed the Private complaints for the offence under Section 138 of the Negotiable Instruments Act. The petitioner/accused herein is roped with the aid of 141 of Negotiable Instruments Act.

Crl.O.P.No.4676 of 2011	C.C.No.7768 of 2010	Cheque No.	Date	Amount
		410342	18.03.2010	Rs.74,000/-
		410350	02.04.2010	Rs.74,000/-

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Crl.O.P.No.19361 of 2011	C.C.No.7769 of 2010	Cheque No.	Date	Amount
		410349	31.03.2010	Rs.1,43,430/-

Crl.O.P.No.19362 of 2011	C.C.No.9327 of 2010	Cheque No.	Date	Amount
		410360	10.03.2010	Rs.53,900/-
		410363	15.03.2010	Rs.74,000/-

5.Per contra, the learned counsel for the respondent submits that this accused who has been arrayed as 5th accused in all the above cases had resigned from the 1st accused Partnership firm by giving notice on 01.10.2008. The 1st accused firm by resolution dated 23.12.2008 had relieved him from 01.01.2009. Thereafter, the Partnership firm was reconstituted on 05.02.2009. From thereafter, this accused has nothing to do with the 1st accused Partnership firm. Further, contended that the complainant, during the course of the business had received several blank cheques and filled up the same and have been filing Negotiable Instruments Act cases before the Courts in Nellore District, Andhra Pradesh as well as in Chennai.

6.For one such dishonor of cheque, the complainant had issued a notice dated 23.04.2010, for which the accused firm by reply dated 14.05.2010 had categorically informed about the accused herein had retired from the accused firm and about reconstitution of the Partnership Firm by fresh Partnership deed dated 05.02.2009. Admittedly, the accused herein is not the signatory to the cheques in issue. Further, it was contended that prior to the filing of the above three cases in C.C.No.456 of 2010, C.C.No.457 of 2010 and C.C.No.458 of 2010 have been filed by the complainant against the accused firm and other two Directors before the learned IV Additional Judicial Magistrate of 1st Class, Nellore, Andhra Pradesh. On acknowledging and accepting the fact of this accused resigned from the Partnership firm. This being so, the accused has been implicated in the above Criminal cases in Chennai is only to cause harassment. Further, it was contended that on going through the complaint, except for the bald averment, that this accused is the Partner of the 1st accused firm, no specific averments is found against this accused. The learned counsel for the accused had filed all the documents namely the resignation letter, resolution of the accused firm, reconstitution deed, reply notice and the copy of the complaints filed before the Nellore Court as typed set, which are not seriously disputed by the respondent.

7.The petitioner/accused relied upon the decisions of the Apex Court and this Court and they are as follows:

1) 2003 (1) CTC 127 in the case of KATTA SUJATHA Vs FERTILIZERS & CHEMICALS TRAVANCORE Ltd., AND ANOTHER;

2) (2010) 3 SCC 330 in the case of NATIONAL SMALL INDUSTRIES CORPORATION LIMITED VS. HARMEET SINGH PAINTAL AND ANOTHER; and

3) 2010 (2) CTC 81 in the case of SANJEEV MALHOTRA VS. MANAM FRUIT PRODUCTS PVT.LTD.

8.Considering the rival submissions and on the materials placed, it is found that the respondent/complainant is aware of the accused resigning from the 1st accused firm, which fact have been intimated to the respondent/complainant, further, except for the bald averment and in the absence of any specific overt act attributable to the petitioner/accused and taking into consideration the respondent/complainant had not arrayed the accused in the cases filed before the Nellore Court. Coupled with the admitted fact that the accused is not the signatory to the cheques in issue. This accused could not be held vicariously liable under Section 141 of the Negotiable Instruments Act.

9.In view of the above, these Criminal Original Petitions are allowed and the proceedings in C.C.No.7768 of 2010, C.C.No.7769 of 2010 and C.C.No.9327 of 2010 as regards the petitioner alone are quashed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

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To

1.The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

2.do thro The Chief Metropolitan Magistrate, egmore,
Chennai.

+3cc to Mr.S.A.Rajan, Advocate SR.No. 73971,73972,73973

+2cc to Mr.A.C.Kumaragrubaran, Advocate SR.No. 73612

CrI.O.P.Nos.19361, 19362 &

4676 of 2011

ASK(22/11/2018)