IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE B. PUGALENDHI

CRL. O.P.No.27621 of 2011
and
M.P.Nos.1 & 2 of 2011

So. Sivasubramaniam ... Petitioner/A4

Vs.

Element Trading Company,
Represented by its Managing Partner,
Sevugan Chetty.
(Amended as per order of this Court,
dated 22.11.2018 made in Crl.M.P. No.17395 of 2018)
... Respondent/Complainant

Prayer : This Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records in STC No.1399 of 2010 on the file of the Judicial Magistrate No.I, Erode and quash the same.

For Petitioners : Mr.John Sathyan

For Respondent : Mr. Ashok Kumar, Senior Counsel for M/s. P. Palani Nathan

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O R D E R

The accused No.4 in STC No.1399 of 2010 on the file the Judicial Magistrate No.1, Erode has filed this petition to quash the proceedings pending against him.

2. The respondent/complainant has filed a private complaint against the petitioner and three others for the offence punishable under Section 138 r/w 141 of the Negotiable Instruments Act. The 1st accused company ie. Srinidhi Fabrics (P) Ltd, Erode, has purchased Dyeing Chemicals from the Complainant company, namely, M/s.Element Trading Co., on credit basis. On various credit purchases, the 1st accused company owe a sum of Rs.10,14,955/- (Rupees Ten Lacs Fourteen Thousand Nine Hundred and Fifty Five Only) to the the

respondent herein.

3. In order to discharge the aforesaid liability, the accused no.3, on behalf of the company/accused no.1 with the knowledge and consent of the accused no.2 & 4 has issued the following post dated cheques as details given below:

Sl. No.	Date	IOB bearing Cheque No.	Amount
1.	30.05.2010	422620	28,080/-
2.	30.05.2010	422621	5,876/-
3.	27.05.2010	422543	39,988/-
4.	02.06.2010	422622	27,466/-
5.	17.06.2010	422623	11,908/-
6.	23.06.2010	422624	11,908/-
7.	24.06.2010	654625	38,844/-
8.	24.06.2010	654626	22,308/-
9.	26.06.2010	654627	5,205/-

4. The above said cheques were presented by the respondent company for collection 25.11.2010 and the same were returned on 26.11.2010 as "Insufficient Funds". The respondent company issued a notice under Section 138(b) of Negotiable Instrument Act, calling upon the accused to make payment of the aforesaid amount within 15 days from the date of receipt of the notice.

5. The accused no.1 received the notice on 06.12.2010 and the intimation was also given to the accused 2 to 4 with regard to the notice. Even after 15 days, the accused failed to pay the cheque amount and therefore, the respondent company has filed the above complaint as against the petitioner and others in STC No.1399 of 2010 before the Judicial Magistrate No.1 Erode.

6.The learned counsel appearing for the petitioner by relying upon the Judgment of Hon'ble Supreme Court in "N.K. Wahi Vs.Shekhar Singh & Others" reported in (2007) 9 SCC 481 submits that the petitioner is arrayed as accused no.4 as a Director of the accused company and the allegation in the complaint is that 3rd accused issued cheques on behalf of the accused no.1 with the consent of the accused no. 2 & 4. For launching a prosecution against the alleged Director, there must be a specific allegation in the complaint as to the part played by him in the transaction. This provision clearly shows that so far as the companies are concerned if any offence is committed by it then every person who is a Director or employee of the company is not liable.

7. The learned counsel further submits that the settled principles was followed by the Hon'ble Supreme Court in "National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal & Another" reported in 2010(2) MLJ (Crl) 301 (SC) and

the same is squarely applicable to the facts of the present case, wherein there is no specific allegation against the petitioner and more particularly the petitioner is admittedly not the signatory to the cheques and the only allegation is that the cheques were issued with the consent of the petitioner, which is insufficient to attract the offence against the petitioner.

8. According to the learned counsel for the petitioner, the petitioner has resigned from the post of Director in the accused company as early as on 28.03.2010 and also informed the Registrar of Companies in the prescribed Form No.32 on 02.08.2010 and the cheques were issued after his resignation as a Director and therefore as per the dictum laid down by the Hon'ble Supreme Court in "D. Harshendra Kumar Vs. Rebatilata Koley Etc." reported in 2011 AIR (SC) 1090, wherein Hon'ble Supreme Court has held as follows:

> "Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it would have been apparent that the appellant has resigned much before the cheques were issued by the Company in the prescribed Form (Form No.32), the Company informed to the Registrar of Companies on March 4, 2004 about appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the appellant".

9. Per contra, the learned senior counsel appearing for the respondent/complainant submits that the petitioner/accused is a Director in the accused Company and he has actively participated in the day today affairs of the company and it is not proper to quash the proceedings at the initial stage without allowing the complainant to adduce his evidence.

10. This Court paid its anxious consideration to the rival submissions and also perused the available records.

11. The petitioner is arrayed as accused No.4 as he is one of the Director of the Company. The averment in the complaint is that accused no.3 has issued Cheques in question with the knowledge and consent of the accused no.4/the petitioner herein. The cheques were presented for collection on 25.11.2010 and were returned on 26.11.2010. The statutory notice required under Section 138(b) of N.I. Act was issued on 04.12.2010 and intimation to the petitioner herein was on

06.12.2010. Even after the statutory period of 15 days as on 21.12.2010, the accused did not pay the cheque amount and therefore the respondent company filed the above complaint.

12. As on 06.12.2010, the petitioner/accused no.4 was not a Director of the accused company and he resigned from the post of Director as on 28.03.2010 and also submitted Form 32 in the Registrar of Companies through online on 02.08.2010. It is not the case of the complainant that the dishonoured cheques were issued by the petitioner and there is no specific averment in the complaint that the petitioner had actively participated in the day today affairs of the company. Therefore, by applying the dictum laid down in the aforesaid decisions(cited supra), this court is inclined to quash the proceedings in S.T.C. No.1399 of 2010 initiated against the petitioner herein for the offence under section 138 of the N.I. Act.

13. Further, considering the age of the complaint, the trial Court is directed to proceed with the complaint as against the other accused and conclude the same within a period of 6 months from the date of receipt of copy of this order. If the complainant during the trial establish his case by adducing evidence through records that the petitioner was also actively participated in the day today affairs of the accused company during the relevant period of time from 06.12.2010 to 21.12.2010, it is open to the trial Court to add the petitioner as an accused by invoking Section 319 Cr.P.C.

14. With the above observations and directions, this petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

lbm

Copty to:

The Judicial Magistrate No.I, Erode

CRL. O.P.No.27621 of 2011
and
M.P.Nos.1 & 2 of 2011

CA(CO)
CB(31/01/2020)