IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.08.2018
Pronounced on : 03.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.25404 & 25405 of 2011
and
M.P.Nos.1, 1, 2 & 2 of 2010

1.Mrs.P.Pappathi,
W/o.Palanivel.

2.Mrs.P.Bhanumathi,
W/o.Rathinavelu. ... Petitioners/Accused in both Crl.O.P.Nos.

Vs.

M/s.Bank of Ceylon,
Represented by Mr.Murthy Rao Sudarsan,
No.1090, Poonamallee High Road,
Chennai - 600 084. ... Respondent/Complainant in both Crl.O.P.Nos.

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the complaint in C.C.Nos.2198 and 2199 of 2010 respectively now pending before the learned II Metropolitan Magistrate, Egmore, Chennai, as regards the above petitioners are concerned.

For Petitioners: Mr.B.Natarajan

For Respondent : Mr.P.Babu

C O M M O N O R D E R

These Criminal Original Petitions are filed to call for the records and quash the complaint in C.C.Nos.2198 and 2199 of 2010 respectively now pending before the learned II Metropolitan Magistrate, Egmore, Chennai, as regards the above petitioners are concerned. Since the petitioners and the respondent are one and the same and the issue in both the cases are similar, hence, both the cases are dealt by a common order.

2.The petitioners, who are accused Nos.3 and 4 in C.C.Nos.2198 and 2199 of 2010, which are pending trial on the file of the II Metropolitan Magistrate Court, Egmore, Chennai as per the private complaint filed by the respondent/complainant for the offence under Section 138 of the Negotiable Instruments Act.

3.The learned counsel for the petitioners submitted that the respondent/complainant, who is a foreign bank recognized by the Reserve Bank of India had filed these cases before the Lower Court against four persons. The first accused is the company dealing with computer software, the second, third and fourth accused are its Directors, who are responsible for the day-to-day affairs of the first accused company.

4.It is further contended that the accused together had approached the complainant's Bank to obtain personal loan for it's employees and on the guarantee of the accused the loans were disbursed to the employees. The first accused to repay the loans and towards the discharge of the liability had issued five cheques in favour of the complainant and the details of the cheques are as follows:

SI.No.	Cheque No.	Dated	Drawn on	Amount
1	869929	17.11.2008	State Bank of India, Vivekananda Branch, Chennai - 600 005.	Rs.2,46,050/-
2	869907	07.12.2008	State Bank of India, Vivekananda Branch, Chennai - 600 005.	Rs.2,46,050/-
3	869930	17.12.2008	State Bank of India, Vivekananda Branch, Chennai - 600 005.	Rs.2,46,050/-
4	869931	17.01.2009	State Bank of India, Vivekananda Branch, Chennai - 600 005.	Rs.2,46,050/-
5	869932	17.02.2009	State Bank of India, Vivekananda Branch, Chennai - 600 005.	Rs.2,46,050/-

The respondent/complainant had presented the above said cheques for realization and the same were returned dishonoured with an endorsement "Insufficient Funds" and thereafter, the respondent/complainant had complied with the statutory compliance and the cases have been filed against the accused.

5.The contention of the learned counsel for the petitioners is that the petitioners namely A3 and A4 have been roped in under Section 141 of the Negotiable Instruments Act, because they are the Directors of the first accused company and they have been held vicariously liable for the act of the first accused company.

6.The learned counsel for the petitioners further contended that the petitioner herein are the females, who are name sake Directors since, their family members are the Directors of the first accused company and they are no way involved in the day-to-day affairs of the first accused company. On going through the complaint, it is clear that the Negotiation for the loans and the person who was in contact with the respondent with regard to the financial assistance and repayment were only the second accused, a Director and who is the signatory of the cheque issued by the first accused company. As far as these petitioners A3 and A4 concerned, except for a bald averments that these petitioners are also the Directors of the first accused company, there is no specific averments against them to make them vicariously liable to repay the debt for the first accused.

7.The learned counsel for the petitioners further contended that there have been series of talk and one time settlement (OTS) was arrived at and as per the settlement, the dues of the first accused company have been made and now the payment has been completed. The respondent/complainant had also admitted the same.

8.The learned counsel for the petitioners further submitted that the complaint could not be withdrawn, since, the respondent/complainant happens to be a foreign bank, which is under Reserve Bank of India and it is awaiting the approval of the Reserve Bank of India to withdraw the complaint.

9.Taking these factors into consideration, this Court finds that there is no specific averments against the petitioners herein and the petitioners being the ladies, who are not involved in the day-to-day affairs of the first accused company and the Hon'ble Apex Court in SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla reported in 2005(8) SCC; and K.K. AHUJA VS. V.K.VOHRA reported in 2010(2) SCC (Crl.) 1181 had held that "Merely being a Director of a company is not sufficient to make the person liable under Section 141 of the Act. A Director in a company cannot be deemed to be in-charge of and responsible to the company for the conduct off its business. The requirement of Section 141 is that persons sought to be made liable should be in-charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact. In this case, there is no such averments, hence, this Court feels that the proceedings against these petitioners are to be quashed.

10.Accordingly, the Criminal Original Petitions are allowed and the proceedings in C.C.Nos.2198 and 2199 of 2010 on the file of the II Metropolitan Magistrate Court, Egmore, Chennai as against the accused Nos.3 and 4 alone are quashed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

ah
To

1.The II Metropolitan Magistrate,
Egmore, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+ 1 cc to MR. B. Natarajan, Advocate Sr.53413
+ 1 cc to Mr. P. Babu, Advocate Sr.54204

Crl.O.P.Nos.25404 & 25405 of 2011

(CS-IX)
EU(21/08/2018)