IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.06.2018

Pronounced on : 19.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.9919 & 24889 of 2010
and M.P.Nos.1, 1 & 3 of 2010

Crl.O.P.No.9919 of 2010

E.Ranjit Kuruvilla ... Petitioner/Accused No.3

Vs.

1.Rajaram K.Kinger,
S/o. Kishandas. ... Respondent/Complainant

2.M/s. Anamallais Hospitality Private Limited,
Represented by its Director and Authorised Signatory - Mrs. Thirtha Kumarasamy,
Admn. Office Anamallais House Annexe,
Chembukkavu, Trissur - 680 020,
Kerala.

3.Mrs.Thirtha Kumaraswamy,
Director/Authorised Signatory,
M/s. Anamallais Hospitality Private Limited,
W/o.M.C.Kumarasamy,
102, Prestige Richmond Apartments,
No.3, Lal Bhag Road,
Bangalore - 560 027.

4.M.C.Kumaraswamy,
Director,
M/s. Anamallais Hospitality Private Limited,
102, Prestige Richmond Apartments,
No.3, Lal Bhag Road,
Bangalore - 560 027. ... Respondents/Accused Nos.1,2 & 4

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the complaint dated 06.01.2009 pending on the file of the Judicial Magistrate Court No.1, Salem, in C.C.No.254 of 2009 and quash the same in exercise of its powers under Section 482 of the Code of Criminal Procedure.

Crl.O.P.No.24889 of 2010

E.Ranjit Kuruvilla ... Petitioner/Accused No.3

Vs.

1.Bharath Kinger (HUF),
Represented by its Kartha
R.Bharath Kinger,
S/o. Rajaram Kinger,
Having his office at
No.18-A, Rajaji Road,
Salem - 636 007. ... Respondent/Complainant

2.M/s. Anamallais Hospitality Private Limited,
Represented by its Director and Authorised
Signatory - Mrs. Thirtha Kumarasamy,
Admn. Office Anamallais House Annexe,
Chembukkavu, Trissur - 680 020,
Kerala.

3.Mrs.Thirtha Kumaraswamy,
Director/Authorised Signatory,
M/s. Anamallais Hospitality Private Limited,
W/o.M.C.Kumarasamy,
102, Prestige Richmond Apartments,
No.3, Lal Bhag Road,
Bangalore - 560 027.

4.M.C.Kumaraswamy,
Director,
M/s. Anamallais Hospitality Private Limited,
102, Prestige Richmond Apartments,
No.3, Lal Bhag Road,
Bangalore - 560 027. ... Respondents/Accused Nos.1,2 & 4

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the complaint dated 12.10.2009 pending on the file of the Judicial Magistrate Court No.III, Salem, in C.C.No.502 of 2010 and quash the same in exercise of its powers under Section 482 of the Code of Criminal Procedure.

For Petitioner : Mr.Abraham Markos
(in both Crl.O.P.Nos.)

For Respondents : No appearance
(in both Crl.O.P.Nos.) [R1 - Name printed]
[R2 to R4 - Not ready]

* * * * *

COMMON ORDER

The petitioner in Crl.O.P.No.9919 of 2010 is accused No.3 in C.C.No.254 of 2009 pending on the file of Judicial Magistrate Court No.I, Salem. Likewise, the petitioner in Crl.O.P.No.24889 of 2010 is accused No.3 in C.C.No.502 of 2010 pending on the file of Judicial Magistrate Court No.III, Salem. Both the complaints were filed by the respondent/complainant for the offence under Section 138 of Negotiable Instruments Act.

2.For the sake of convenience the petitioner herein and respondent No.1 are referred to as "Accused No.3" and "complainant" as in the complaint. Since the points arising for consideration are one and the same, both the quash petitions are taken up for consideration together.

3.The contention of the accused No.3 is that a complaint was instituted under Sections 138, 141 and 142 of the Negotiable Instruments Act by the complainant against the accused and three others. On receipt of Summons, accused No.3 had appeared and now seeks quashing of the complaint since the allegations therein are nothing but a motivated mala fide exercise on the part of the complainant. Despite the complainant was made aware of the fact that the accused No.3 is no way concerned with the transactions and he is not the signatory to the cheque and he had resigned from the first accused company long before the cheque was issued and hence, he cannot be vicariously held liable.

4.On perusal of the complaint, it reveals that the accused were in need of some funds to start a project for which the complainant on 18-07-2008 was approached by the 2nd and 4th accused namely Kumarasamy group on behalf of the 1st accused company and had received a sum of Rs.6,00,000/- (Rupees Six lakh only) and had also executed a Promissory note in favour of the complainant agreeing to pay the loan amount with interest at the rate of 18% per annum. Towards the repayment of the above said loan, the accused had issued five cheques of Rs.1 lakh each dated from 20-08-2008 to 20-10-2008. On presentation of the cheques for encashment, during 1st week of November, 2008, the above said cheques were returned by the bankers of the accused for the reason "Funds insufficient". Thereafter, complying with the statutory provisions, the complaint has been filed.

5.The accused No.3 was once the Chairman and Director of the 1st accused company Annamallais Hospitality Pvt. Ltd., a company having registered office at Bangalore and administration office at Trissur Kerala. The company was incorporated on 21-03-2003 and engaged in the business of restaurant and tourists related business at Bangalore. At the time of incorporation, the company had three shareholders, namely, the accused No.3, accused's wife Mrs.Shenas Guruvilla and one Alok Malhothra. Subsequently, the entire shares held by the Alok Malhothra were transferred in favour of the accused. On 25-03-2008, an agreement was executed for sale of shares between the accused and the Shenas Guruvilla on one side and one Kumarasamy and his group on the other side, who has been arrayed as accused No.4 in the complaint.

6.The said Kumarasamy group had subsequently taken over the 1st accused company by agreement dated 25-03-2008 and 12-06-2008 and the entire shares of the accused No.3 Ranjith Guruvilla and Smt.Shenas Guruvilla were purchased by the said Kumarasamy group and the said Kumarasamy group had taken over the assets and liabilities of the 1st accused company absolutely and the said Kumarasamy group would only be responsible for all future responsibilities from the date of taken over i.e., from 31-03-2008. The 3rd accused group had resigned from the Board of Directors of the 1st accused company and the Kumarasamy Group was inducted as new Board of Directors of the 1st accused company with effect from 12-06-2008 and Form-32 was also filed with the Registrar of Companies, intimating the resignation of the accused from the Board of Directors of the company and appointment of the new Directors.

7.While this being the factual position, on 24-11-2008 the accused No.3 herein was shocked to receive a notice dated 22-11-2008 from the complainant for dishonor of five cheques dated 20-08-2008 to 20-10-2008, which cheques were issued by the 2nd and 4th accused on behalf of the 1st accused company and action was proposed for dishonor of cheques under Section 138 of Negotiable Instruments Act.

8.On receipt of the notice, this accused No.3 sent reply dated 25-11-2008 setting out the entire facts to the complainant. No response was forthcoming thereafter. Further to the shock and surprise of this accused, he has been arrayed as 3rd accused in the complaint filed by the complainant, in which this accused is shown as the Chairman of the 1st accused company.

9.The learned counsel for the accused No.3 further contended that there is no averments against this accused with regard to the availment of funds, issue of cheques and its dishonor and the entire facts of the accused No.3 status with 1st accused was made known to the complainant by the accused No.3 through his reply notice dated 25-11-2008. In the reply notice, the documents filed before the Registrar of Company finds place. In view of the above, there is no basis and justification of the complainant to array this accused as A3 in C.C.No.254 of 2009.

10.With regard to C.C.No.502 of 2010 the 2nd and 4th accused had approached the complainant for a loan of Rs.2,25,000/- on 17-09-2008 for the 1st accused company and on receipt of the said loan amount 2nd and 4th accused had issued three cheques for Rs.75,000/- each dated from 17-03-2009 to 17-07-2009 and assured that the cheques to be honoured on presentation on due date i.e., on or after 3rd week of July 2009. Believing the representation of 2nd and 4th accused, the complainant had presented the cheques and on presentation of the above cheques on 31-07-2009, which were returned on the ground that "Funds insufficient" on the account of the accused No.3. Thereafter, notice was sent on 29-08-2009 and it is admitted that the accused herein namely the accused No.3 had sent a reply notice. The complainant had brushed aside the same and hence proceeded to file a criminal complaint in C.C.No.502 of 2010 and arrayed this accused as A3.

11.In the entire reading of the complaint, it is seen that except for the averments that the transaction was done with the consent of A3 and cheques were issued on behalf of the 1st accused company with the knowledge and consent of the 3rd accused. Other than these fag reference, there is no averments against accused No.3 . Though, the complaint mentions about the reply notice sent by this accused, there is no reasons in the complaint that the contention of the accused No.3 was false and no reason given to brushed aside the contention of the accused No.3.

12.On going through the complaint, it could be seen that there are no specific averments with regard to the complainant except this accused No.3 being referred as Chairman, which is not correct and the accused had sent a reply notice annexing the Form-32 and other documents. It is an admitted case of the complainant that the loan availed was on 17-09-2009, on which day this accused No.3 was no longer a Director and Chairman of the 1st accused company. In proof of the same, the accused No.3 had filed the agreement for sale of shares to Kumarasamy group and the resignation of the accused No.3 as Director and Chairman dated 12-06-2008 and Form-32 informing the

Registrar of Companies about the accused cessation of Chairman from 12-06-2008 and Kumarasamy group taking over the Management of the 1st accused company.

13.Thus, the accused No.3 ceased to be a Director from 12-06-2008, which fact has been intimated to Registrar of Companies, which is depicted in Form-32, which is of impeccable character and it is the admitted case of the complainant that the loans for the 1st accused company was availed by the 2nd and 4th accused on 15-07-2008 and 17-07-2008 and had executed pronotes and issued the cheques in issue in the above two cases. Hence, accused No.3 could not be held liable for the company vicariously, this accused No.3 ceased to be Director of the 1st accused company and its Chairman from 12-06-2008 and the availment of loan and its liability is of the year July 2009 and hence, this accused could not be held liable.

14.Further, this accused No.3 had made known the fact that the accused No.3 is not a Director and the Chairman of the 1st accused company through his reply notice along with the Form-32, which have not been taken into consideration by the complainant and the accused has been arrayed as A3.

15.In view of the above factual and legal matrix, Crl.O.P.No.9919 of 2010 and Crl.O.P.No.24889 of 2010 are allowed. Consequently, the Criminal proceedings pending on the file of the Judicial Magistrate Courts' Nos.I & III, Salem in C.C.No.254 of 2009 and C.C.No.502 of 2010 are hereby quashed with regard to the petitioner/accused No.3 alone.

16.In the result, both the Criminal Original Petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.I,
Salem.

2.The Judicial Magistrate No.III,
Salem.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.ABRAHAM MARKOS, Advocate, S.R.No. 48188

ORDER IN
Crl.O.P.Nos.9919 & 24889 of 2010

NRL(CO)
TR(30/07/2018)