

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.06.2018
Pronounced on : 03.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.4114 of 2011
and
M.P.No.1 of 2011

1.N.Narayanan,
Chairman,
M/s.Pyramid Saimira Production
International Limited,
(PSPIL EXPENS),
No.6, Aishwarya Complex,
2nd Street, Gopalapuram,
Coimbatore - 641 018.

2.P.S.Saminathan,
Managing Director,
M/s. Pyramid Saimira Production
International Limited,
(PSPIL EXPENS),
No.672, Annasalai 2nd Floor,
Temple Tower,
Chennai.

..Petitioner/Accused Nos.3 & 4

Vs.

M/s.Sun TV Network Limited,
Represented by its Authorised Signatory
L.Jotheeswaran,
No.4, Norton Road,
Mandaveli,
Chennai - 600 028.

..Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.7444 of 2010 pending on the file of the XXIII Metropolitan Magistrate Court at Saidapet and quash the same.

For Petitioners: Mr.R.Sagadevan

For Respondent : Ms.M.Sneha

O R D E R

This Criminal Original Petition is filed to call for the records in C.C.No.7444 of 2010 pending on the file of the XXIII Metropolitan Magistrate Court at Saidapet and quash the same.

2.The petitioners herein, who are accused 3 and 4 in C.C.No.7444 of 2010 filed by the respondent/complainant for the offence under Sections 138 and 141 of Negotiable Instruments Act, pending trial on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai.

3.The quash petition filed by the petitioners has been assailed on the main ground that the cheque in the issue was given as security, and there was no legally enforceable debt. Further, the 2nd petitioner is neither the signatory of the cheque nor the person issued the cheque. The further contention is that Civil suit C.S.No.821 of 2009 is pending on the file of this Hon'ble Court. The further contention is that merely stating that the petitioners are involved in the day to day activities of the 1st accused company will not be fastened criminal liability. Further, they relied upon the decisions of the Apex Court in the cases of SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla reported in 2005(8) SCC; Sabitha Ramamoorthy Vs. RBS Chenna Basavaradhya reported in 2006(10) SCC 581 and K.K. AHUJA VS. V.K.VOHRA reported in 2010 (2) SCC (Crl.)1181 and the complaint is frivolous, vexatious and has been filed only to harass the petitioner with a mala fide intention.

4.The brief facts of the case is that the respondent/complainant is a Satellite Television broadcaster in the course of their business the petitioner approached the respondent that the petitioner are about to produce Tamil feature film Marmayogi and offered to assign exclusive world Satellite rights Terrestrial Television rights and all other copy rights of the said film to the complainant for which an assignment agreement dated 18-09-2008 had been entered into. As per the said agreement for the feature film "Marmayogi", at the time of entering into the agreement the petitioner company had collected a sum of Rs.3,50,00,000/- (Rupees Three Crores and Fifty lakhs only) thereafter the petitioner for some reason abandoned the production of the said film and undertook to refund the above advance amount received from the respondent and accordingly as refund of the part advance amount a cheque bearing No.001664 dt:18-2-2010 drawn on HDFC Bank Anna Salai Branch for a sum of Rs.2,74,00,000/- (Rupees Two Crores and Seventy four lakhs) had been issued by the petitioner in favour of the respondent. Thereafter, when the cheque was presented for collection with the respondent bankers, namely City Union Bank Ltd., Chennai 88 the cheque was

returned for the reasons funds "insufficient". Thereafter, complying with the statutory requirements, a case was filed against the petitioner and two others which was taken on file by the trial court as C.C.No.7444 of 2010. On receipt of the summons the petitioner has filed the above Quash petition.

5. On perusal of the assignment agreement dated 18-09-2008 it could be seen that the assignment agreement has been signed by the 2nd petitioner who is the Managing Director of M/s. PYRAMID Symira International Ltd., the 1st accused in the 138 case. The petitioners by their reply notice dated 07-05-2010 to the statutory notice dated 15-04-2010 have admitted about the receipt of the statutory notice and also receipt of Rs.3,50,00,000/- (Rupees Three Crores and Fifty lakhs) in pursuant to the agreement in their business and also issuance of cheque for Rs.2.75 Crores to the respondent. Further it is admitted that the one of the signatory to the cheque is the 1st petitioner. It is apparent that the 1st petitioner is the Chairman of the 1st accused company who has signed the cheque and 2nd petitioner is the Managing Director of the 1st accused company.

6. The respondent had vehemently opposed the quash petition filed by the petitioner reiterating the contents of the complaint. Further submitted that all the statutory requirements have been complied with and there is no infirmity in the complaint. The cheque in issue has been issued in discharge of the part liability. The 1st petitioner being the Chairman and signatory to the cheque and the 2nd petitioner being the Managing Director and signatory to the business agreement are liable to be prosecuted. Further, the citation submitted by the petitioners are not relevant to the facts

and circumstances of the above case. In such circumstances, the contention of the petitioner cannot be countenanced.

7. Further, the Hon'ble Apex Court in 2005 SCC Cr1.1975 reiterated in K.K. AHUJA VS. V.K. VOHRA and another 2010(2) SCC (Cr1.)1181 had categorically held that in cases under Negotiable Instruments Act under Sections 141(1) and 138, for dishonor of cheque offence by company, the Managing Director can be prosecuted for offences by company, he being prima-facie in charge of and responsible for company's business and affairs and also signatory of a cheque, which is dishonoured, is concerned, he is clearly responsible for the incriminating act and will be covered under section 141. Hence, the contention of the petitioner has no merit and the above quash petition is liable to be dismissed. This Court on the above factual and legal matrix finds the petition filed by the petitioner is to be dismissed.

8.It is seen that in the trial court the above case has been filed in the year 2010 and the quash petition before this Court is pending from the year 2011, due to the pendency of the above quash petition, the trial could not be proceeded for all these years. Hence the trial court is directed to proceed and dispose of the case expeditiously within a period of six months.

9.Hence the quash petition is dismissed with the above observations. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The XXIII Metropolitan Magistrate,
Saidapet.

2.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr. R. Sagadevan, Advocate Sr.42488

+ 1 cc to Mr.B.K. Girish Neelakadan, Advocate Sr.43446

Cr1.O.P.No.4114 of 2011

VBA(CS-VII)
EU(26/07/2018)

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